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Supreme Court, U.S.
FILED
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No. _____

82

In The
Supreme Court of the United States

VELIMIR PAVLOV
DUMITRA PAVLOV

Petitioners,

v.

INGLES MARKETS ETC. *Respondents*

On Petition For Writ Of Certiorari
To The Court Of Appeals Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Pro Se
VELIMIR PAVLOV
DUMITRA PAVLOV
6935 Valley Forest Dr.
Cumming, GA
30041
678-464-0508

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QUESTIONS PRESENTED FOR REVIEW

1) The wrong judicial estoppel applied in the case will set the wrong guides and will promote corruption, conspiracy and crime to be unpunished in American justice. This case will be listed as citations like they listed citations of cases in my case.

2) I disclosed the law-suit to Chapter 13 trustee and to my bankruptcy attorney, Angela Hamilton, and to my attorney in the case, Robert W. Cullen. I ask the Supreme Court to review these documents that show I disclosed the law-suit.

3) I have to file Pro Se because of my attorney's conspiracy in this case. I filed with the District Court the conspiracy of my attorney, Paula J. McGill, and the conspiracy of attorney, Robert W. Cullen, with Ingles Markets, Inc. and the court did nothing about this conspiracy.

4) I am not the parent of my attorneys and they are not minors. Why then have I been punished for their intentional mistakes, for their conspiracy with Ingles Markets, Inc. and the courts dismissed the case? I disclosed the law-suit to Chapter 13 trustee and to both my attorneys properly. We ask the Supreme Court to not promote the attorneys' conspiracy and to grant the Writ of Certiorari and Ingles Markets, Inc. be tried in the court for their acts and crimes committed.

5. I address a question to the Supreme Court: Is America the same after the incident on 9/11? Me and my family are not the same after the incident from May 28, 2001 at Ingles Markets, Inc. store in Dacula, Georgia. Please look at the 4 pictures on pages 2,3. We have a lot of physical and moral damages.

QUESTIONS PRESENTED FOR REVIEW - Continued

Ingles Markets, Inc. had the money to buy my own attorneys and have the case dismissed. My attorneys made intentional mistakes (that is conspiracy) and had the case dismissed.

- What will the Supreme Court do about cases like this, case of attorneys' conspiracy?
- Will the Supreme Court promote conspiracy in American justice?

6) My wife Dumitra Pavlov is not a debtor in my bankruptcy or any other bankruptcy.

- Why has the court applied the judicial estoppel against her claims? Her claims are separate from my claims and are different claims.
- We want the Supreme Court to address this problem because my wife has damages for all her life and other cases to follow will be wrongly decided as a result of this case.

7) I am current on my bankruptcy plan as of the date of Petition for writ of Certiorari.

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court of the United States Rule 29.6 It is no parent corporations or publicly held company that owns 10% or more and the following is an alphabetical list of the trial judges, attorneys, persons, firms, partnerships and corporations with any known interest in the outcome of this Writ of Certiorari.

1. Chapter 13 trustee of bankruptcy of VELIMIR PAVLOV - Petitioner
   1A. JAMES H. BONE - 13 Trustee
   1B. NANCY J. WHALEY - 13 Trustee

2. GWINNETT COUNTY - Respondent

3. GWINNETT COUNTY POLICE DEPARTMENT - Respondent
   3A. POLICE CHIEF W.H. DEAN - Respondent
   3B. OFFICER C.E. MORRIS - Respondent

4. INGLES MARKETS INC. - Respondent
   4A. INGLES MARKETS, INC. MANAGER GREG TOLBERT - Appellee

5. JAMES W. SCARBROUGH, Attorney for Ingles Markets, Inc. - Appellee, MABRY & McCLELLAND, LLP.

6. J.O. FORESTER, Judge, United States District Court Northern District of Georgia

7. KAREN GILPIN THOMAS, Attorney for Gwinnett County - Appellee, Gwinnett County Law Department

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT - Continued

8. PAULA JEANETTE McGILL, Attorney for appellant terminated 6/30/2004.

9. REGINA BENTON REID, Attorney for Gwinnett County Police, W.H. DEAN, C.E. MORRIS - Appellees, Carothers & Mitchell, LLC.

10. RICHARD A. CAROTHERS, Attorney for Gwinnett County Police, W.H. DEAN, C.E. MORRIS - Appellees, Carothers & Mitchell, LLC.

11. ROBERT W. CULLEN, Attorney for Appellant, Terminated 01/16/2007

12. VELIMIR & DUMITRA PAVLOV - Appellant. Pro Se.

13. WALTER B. McCLELLAND, Attorney for Ingles Markets Inc., GREG TOLBERT - Appellees, Mabry & McClelland, LLP.

14. TRAVELER'S PROPERTY AND CASUALTY COMPANY, Insurer for Appellee, INGLES MARKETS, INC.

15. OHIO CASUALTY COMPANY, Insurer for Appellee, INGLES MARKETS, INC.

16. BIRCH - Circuit Judge Eleventh Circuit

17. BARKETT - Circuit Judge Eleventh Circuit

18. PRYOR - Circuit Judge Eleventh Circuit

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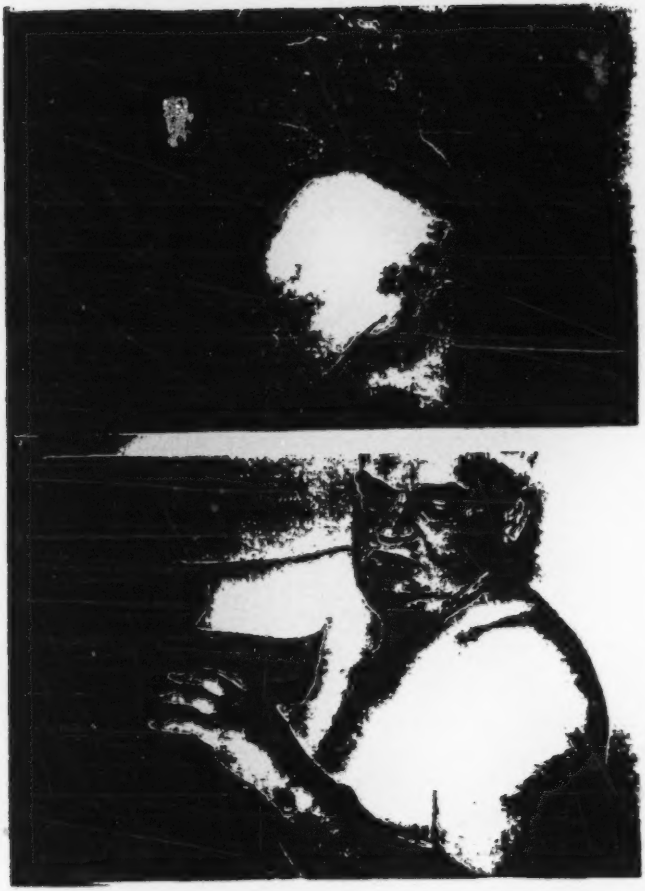
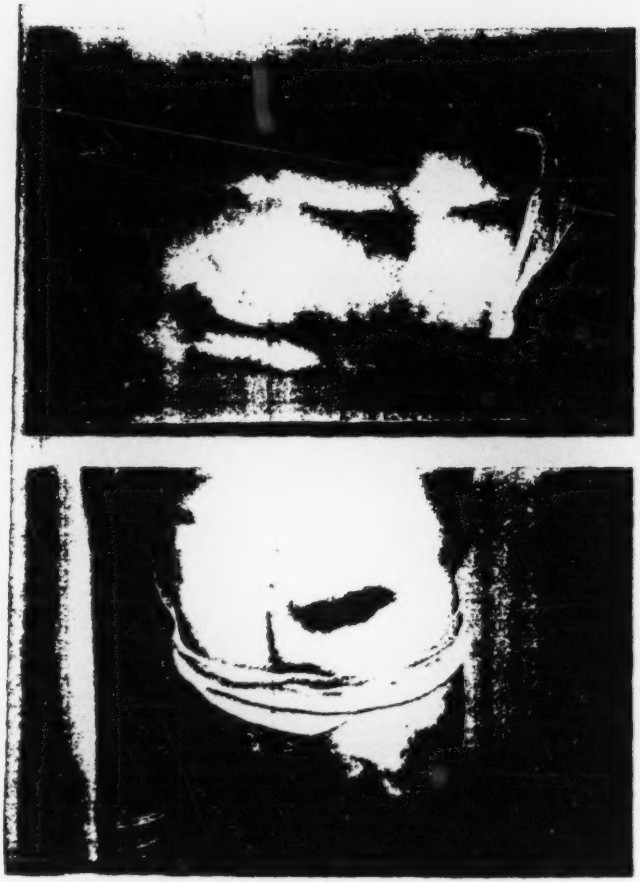
FACTS OF THE CASE

On May 28, 2001 I went to shop at Ingles Markets Inc. store in Dacula, Georgia. I paid with debit card. After paying the managers decided not to sell to me the merchandise. I told them I will sue them because I already paid for the merchandise and it belongs to me. They told me they are calling police and charging me with theft and trespassing.

One of the managers, SHANE HALLEY, pulled out his gun in the parking lot. The other manager, TIM ARNOLD, grabbed me by the neck and suffocated me. It escalated and I was assaulted and beaten up by INGLES MARKETS INC. employees and OFFICER MORRIS. I was arrested and INGLES MARKETS INC. pressed charges then the next day they dropped the charges. Please look at the 4 pictures on pages 2;3.

With false testimony of OFFICER MORRIS and INGLES MARKETS INC. employees I was indited by Grand Jury. I was found not guilty of all charges.





COURT ORDERS PRESENTED FOR REVIEW

1. The decision by the Court of Appeals Eleventh Circuit on June 6, 2007 before Circuit Judges: BIRCH, BARKETT, & PRYOR. AP1-AP3

2. The order by the District Court for the Northern District of Georgia, on October 13, 2006, by Judge J. OWEN FORRESTER.

3. The opinion and order by the District Court for the Northern District of Georgia on April 11, 2006 by Judge J. OWEN FORRESTER.

4. The order by the District Court for the Northern District of Georgia on June 30, 2004 by Judge J. OWEN FORRESTER.

All these court orders are presented in appendix.

ARGUMENTS FOR ALLOWANCE OF WRIT

QUESTION 1

In the cases cited by INGLES MARKETS INC.; by the District Court and by the Court of Appeals attorneys conspiracy was not involved. In this case judicial estoppel was applied as a result of attorney's intentional mistakes, attorney's conspiracy with Ingles Markets, Inc. Because I properly disclosed the law-suit. Please see pages 7, 7a, 8, 9, 9a, 9b, 9c. On page 7, 7a at paragraph 3: "An application for special counsel is needed" is proving that I disclosed the law-suit to Chapter 13 trustee.

This case will be used as citations in other cases to come and will promote corruption, conspiracy and crime to be unpunished in American justice.

This case will set the wrong guides for the future cases to be decided in American justice.

This case of attorneys' conspiracy will allow criminals to get shelter under the misinterpretations of laws like Ingles Markets, Inc. did.

QUESTION 2

I properly disclosed the law-suit. I am asking the Supreme Court to review the documents that District Court and Court of Appeals disregard and discredit:

A. OBJECTION TO CONFIRMATION

By Chapter 13 trustee. Exhibit 5 Part of Pavlov's bankruptcy filed by Ingles Markets, Inc. in District Court as Exhibits 1-8. (Pages 7,7a, 8)
At paragraph 3: "An application for special counsel is needed" is revealing that I told Chapter 13 trustee that I have a law-suit against Ingles Markets, Inc. In Bankruptcy Court of Northern District of Georgia you must have a special counsel to settle or disperse the money from a lawsuit. I disclosed that law-suit.

B. ATTACHMENT 9 (PAGE 9, 9a, 9b, 9c)

It is a part of Pavlov's bankruptcy file filed by Ingles Markets, Inc.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA

IN RE:	)	CHAPTER 13
	)	
VELIMIR PAVLOV	)	
	)	
DEBTOR(S)	)	CASE NO. G05-20881-E

OBJECTION TO CONFIRMATION

COMES NOW JAMES H. BONE, TRUSTEE herein, and objects to Confirmation of the plan for the following reason(s):

1. The Debtor's plan does not provide for payment of all of the Debtor's disposable income to the Trustee for 36 or more months as required by 11 U.S.C. Sec. 1325(b) (1) (B).

2. The plan as proposed will extend beyond 60 months, contrary to 11 U.S.C. Sec. 1322(d).

3. An application for special counsel is needed.

4. On Schedule J, there are no allocation(s) for the wife's credit card debts.

5. The plan must be amended to provide for payment of all tax refunds to the Trustee.

6. The Plan is not feasible on its face. The Trustee requests that the court reduce attorneys fees by $500.00

WHEREFORE, the Trustee moves the Court to inquire into the above objections, deny Confirmation of this Debtor's plan, and to dismiss this case.

Date: 05/17/05

/s/
GEORGE A. SHAW
STATE BAR NO. 638350

JAMES H. BONE
STANDING CHAPTER 13 TRUSTEE
SUITE 1100, THE EQUITABLE BUILDING
100 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30303-1901
404-525-2555

G05-20881-E CERTIFICATE OF SERVICE

This is to certify that I have this day served

DEBTOR(S):
VELIMIR PAVLOV
6935 VALLEY FOREST DRIVE
CUMMING, GA 30041

ATTORNEY FOR DEBTOR:
HAMILTON & SANDERS, LLC
797 MORELAND AVE, SE
ATLANTA, GA 30316

in the foregoing matter with a copy of this Objection to Confirmation by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon. In accordance with General Order No. 99-1, Paragraph 9, participants in the Electronic Case Filing project have been served by electronic service of the "Notice of Electronic Filing" to the email address shown thereon.

Dated: May 20, 2005

/s/

JAMES H. BONE
STANDING CHAPTER 13 TRUSTEE
SUITE 1100, THE EQUITABLE BUILDING
100 PEACHTREE STREET, N.W.
ATLANTA, GEORGIA 30303-1901
404-525-2555

3. Payments to creditors

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within 90 days immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR
COUNTRYWIDE HOME LOANS
P.O. BOX 5170
SIMI VALLEY, CA 93062
DATES OF PAYMENTS
1/05, 2/05, 3/05
AMOUNT PAID: $2,475.00
AMOUNT STILL OWING: $123,000.00

None ■ b. List all payments made within one year immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR AND
RELATIONSHIP TO DEBTOR
DATE OF PAYMENT

AMOUNT PAID
AMOUNT STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments.

None ☐ a. List all suits and administrative proceedings to which the debtor is or was a party within one year immediately preceding the filing of this bankruptcy case. (Married debtors filing under Chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER
Velimir Pavlov and Dumitra Pavlov vs. Ingles Markets, Inc, et al. and Officer C.E. Morris, Police Chief W.H. Deam, Gwinnett Co., Georgia
NATURE OF THE PROCEEDINGS
Plaintiffs request of Depositions of Ingles Employees
COURT OR AGENCY AND LOCATION
United States District Court, NDGA/Atlanta Div.
STATUS OR DISPOSITION
Pending
CAPTION OF SUIT AND CASE NUMBER
Unifund CCR Partners assignee of Citibank Universal Card Services vs. Velimir Pavlov
Case No. 05-CV-0389
NATURE OF PROCEEDINGS
suit on account

COURT OR AGENCY AND LOCATION
Superior Court of Forsyth County
STATUS OR DISPOSITION
pending, served 3/5/2005

None ■ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petitio is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED
DATE OF SEIZURE
DESCRIPTION AND VALUE OF PROPERTY

5. Repossessions, foreclosures and returns

None ■ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petitio is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER
DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN
DESCRIPTION AND VALUE OF PROPERTY

ATTACHEMENT "9"

in District Court as Exhibit 1-8.

At Exhibit 2, Financial Affairs, paragraph 4 the law-suit is listed properly. (Pages 9, 9a, 9b, 9c Attachment 9). I am not an attorney. This is the reason I hired Angela Hamilton. If she made intentional mistakes I could do nothing about them because I do not know the laws.

Please see affidavit of Velimir Pavlov Page D9; D10 Paragraphs 4, 5 and Pages D10; D11 Paragraphs 8, 9, 10.

Also see affidavit of Angela Hamilton Pages D14, D15, D16 Paragraphs 4-10.

C. PLAINTIFF'S RESPONSE TO DEFENDANTS INGLES MARKETS INC. SECOND MOTION FOR SUMMARY JUDGEMENT.

Please see the Factual Background Argument; the Legal Argument and the Conclusion (Pages D2-D7)

- This document is showing that I disclosed the law-suit to Chapter 13 trustee, to my bankruptcy attorney Angela Hamilton and to my attorney in the case Robert W. Cullen.

- This document is showing no intent to conceal the law-suit.

- The application for special counsel was not done in time by Angela Hamilton and Robert W. Cullen. After the Ingles Markets Inc. complaint, the application was done and approved (Pages i, ii , and iii from appendix). This is not proving that I concealed the law-suit.

- Ingles Markets Inc. made false and not important accusations and the District Court accepted them and dismissed the case.

D. AFFIDAVIT OF VELIMIR PAVLOV

Please see pages D9, D10, D11 Paragraphs 2-10

I disclosed the law-suit initially to my bankruptcy attorney Angela Hamilton, I disclosed at 341 meeting the lawsuit to the trustee George Shaw and to attorney Robert Barcus representing Angela Hamilton at 341 meeting.

E. AFFIDAVIT OF ANGELA LITTLE HAMILTON.

I disclosed the law-suit at first interview with Angela Hamilton and the law-suit was listed at Financial Affairs number 4 of the bankruptcy schedule. See page D14 paragraph 4 and also see page 9, 9a, 9b, 9c from writ (attachment 9)

I disclosed the law-suit at 341 meeting of creditors to the trustee attorney George Shaw and to attorney Robert Barcus, Esquire representing Angela Hamilton. See page D14 paragraph 5. Also see pages D15, D16 Paragraphs 6-10

All these 5 documents presented by me have been disconsidered by District Court and by the Court of Appeals Eleventh Circuit.

I disclosed the law-suit at 341 meeting of creditors to the trustee attorney George Shaw and to attorney Robert Barcus, Esquire representing Angela Hamilton. See page D14 paragraph 5. Also see pages D15, D16 Paragraphs 6-10

CONCLUSION

All these 5 documents presented by me have been disconsidered by District Court and by the Court of Appeals Eleventh Circuit.

**IN THE UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF GEORGIA
ATLANTA DIVISION**

VELIMIR PAVLOV and
DUMITRA PAVLOV,

Plaintiffs

v.

CIVIL ACTION FILE
NO.: 1:03-CV-1647-JOF

INGLES MARKETS, INCORPORATED, GREG TOLBER, OFFICER C.E. MORRIS (BADGE 150), in his individual and official capacities, POLICE CHIEF W.H. DEAN, in his individual and official capacities, and GWINNETT COUNTY, GEORGIA,

Defendants.

PLANTIFFS' RESPONSE TO DEFENDANT INGLES MARKETS, INC.'S SECOND MOTION FOR SUMMARY JUDGEMENT

Then Defendant, Ingles Market, Inc., has once again filed for Summary Judgement in this matter. Defendant's Motion is not well taken, either factually or legally. Defendant's Motion, should the Court choose to address it at this late date, must be denied.

I. FACTUAL BACKGROUND

Plaintiffs' case has been extensively litigated before this Court and was previously the subject of Summary Judgement Proceedings. In its Order of March 22, 2005, this Court entered an extensive Order dismissing parties and limiting the issues for trial against Defendant Ingles Market, Inc. The remaining issues are:

1) False Imprisonment Order, page 35

2) Assault and Battery Order, page 36

3) Negligent Retention Order, page 36

4) Loss of Consortium, page 36

All other claims and parties were dismissed by the Court.

The remaining claims seek damages from Ingles Market, Inc. for injuries Mr. Pavlov and Mrs. Pavlov incurred as a result of the assault and battery on Mr. Pavlov, which occurred on May 21, 2001. The basic facts are that Mr. Pavlov went to Ingles Market in Dacula, Georgia to purchase groceries and a bottle of wine. Ingles' staff first sold Mr. Pavlov the items he came in to purchase. The items were charged to his debit card. Then they decided not to sell the items to Mr. Pavlov and credited his debit card, after first selling the items to Mr. Pavlov.

The situation degenerated into a physical confrontation where Mr. Pavlov was severely beaten. Mr. Pavlov has suffered long term and serious injuries as a result of the altercation. Ingles' staff should not have treated Mr. Pavlov as they did.

The current Motion is based on the fact that Mr. Pavlov filed a Chapter 13 Petition in the United States Bankruptcy Court on April 7, 2005. Mr. Pavlov disclosed this action in that filing and discussed this case in the 341(a) Meeting of Creditors in his Bankruptcy case (See Pavlov Affidavit attached hereto as Exhibit A at Paragraph 4). Counsel for the Standing Chapter 13 Trustee, Mr. James Bone, instructed Mr. Pavlov that he could not settle this matter without the consent of the Bankruptcy Court. (See Pavlov Affidavit at Paragraph 5). Mr. Pavlov's bankruptcy counsel was instructed to file a motion for the Appointment of Special Counsel. (See Pavlov Affidavit at Paragraph 6) The same was not timely completed, but has now been done. (See Pavlov Affidavit, at Paragraph 9 and Hamilton Affidavit, attached hereto as Exhibit B, at Paragraph 6).

There was no attempt to conceal this action from the Bankruptcy Court, or to avoid any creditors. (See Pavlov Affidavit at Paragraph 4). In fact, Mr. Pavlov understood that if he prevails in this matter, that all creditors would have to be paid in full. (See Pavlov Affidavit at Paragraph 5).

II. ARGUMENT

Defendant's Motion assumes that Mr. Pavlov had an intent to defraud the Bankruptcy Court. If this were true, one possible remedy would be to dismiss or limit Mr. Pavlov's claims. Mrs. Pavlov is not a party to the bankruptcy. (See Pavlov Affidavit at Paragraph 7). Her claims in this context are independent of her husband's.

Mr. Pavlov's bankruptcy filing is attached to Defendant's Motion, as Exhibits 2-8. The docket sheet in the Voluntary Petition is Exhibit 1 to Defendant's Motion. In fact, Mr. Pavlov did disclose this action. See the Statement of Financial Affairs, page 2, included in Exhibit 2 to Defendant's Motion. Also, this case was specifically addressed in the 341(a) hearing before the Trustee. (See Hamilton Affidavit at Paragraph 5). Unfortunately, the tape of the 341(a) meeting of creditors was unintelligible and therefore, a transcript is not available. (See Hamilton Affidavit at Paragraph 8)..

Moreover, the Defendant's Motion clearly reveals that counsel for the Trustee not only knew of this action, but required action in response to the pendency of this case. See: Trustee's Objection to Confirmation, Exhibit 5 to Defendant's Motion, which clearly reveals that the Trustee, through Mr. George Shaw, knew of this case and instructed Mr. Pavlov's Bankruptcy counsel to take the appropriate action. Mr. Pavlov's counsel amended the plan, but failed to file an Application for the Appointment of Special Counsel.

The Application for Special Counsel was not timely filed bu it has now been filed. There is no evidence of an intent by Mr Pavlov, to mislead the Court.

III. LEGAL ARGUMENT

The Court, in its Order of January 30, 2006, has directed that the standing issue be specifically addressed. The law in this circuit and this district is clear that the Trustee owns this cause of action until all debtors of Mr. Pavlov are paid in full, or the Trustee abandons the claim. At this point in time, only the Trustee may pursue Mr. Pavlov's claims, 11 U.S.C. § 541(a) Parker v. Wendy's International 365 F.3d. 1268, 1272 (11th Cir, 2004).

However, in this case the debtor has moved for the Appointment of Special Counsel. Therefore, the proper remedy is to allow the Bankruptcy Court an opportunity to address the Application for Special Counsel. Failing to do so, would deny the creditors their only real chance to recover more that $.06 on the dollar.

The key distinctions in this case are that Mr. Pavlov: 1) revealed the case, and 2) has requested the Appointment of Special Counsel. The Eleventh Circuit has essentially addressed this case in its decision in Parker v. Wendy's International, Supra. However, Mr. Pavlov has a stronger claim that Ms. Parker because he actually revealed this action in his initial Bankruptcy filing. (See Hamilton Affidavit at Paragraph 4 and Exhibit 2 to Defendant's Motion). Additionally, Mr. Pavlov has filed the appropriate Motion with the Bankruptcy Court.

The proper person to prosecute this claim is the bankruptcy Trustee, Mr. Bone, and not Mr. Pavlov. The Bankruptcy case is still open; therefore, under Parker v. Wendy's International, Mr. Bone must be allowed to pursue the claim or abandon it in whole or in part to Mr. Pavlov.

This Court should defer to the Bankruptcy Court the determination of any interest Mr. Pavlov retains in the claim during the pendency of the Bankruptcy. Mr. Bone is not limited to Mr. Cullen as his possible counsel in this matter, but he must be given a chance to address the issues in this case. In the Northern District of Georgia, bankruptcy counsel must move for appointment of special counsel. Plaintiff's counsel, in this form, lacked the standing to file this motion. In due course, the Bankruptcy Court will address the issue of the appropriate counsel and give Mr. Bone and Plaintiff's counsel direction in this matter.

Mr. Pavlov revealed the asset. For reasons unknown, Bankruptcy counsel failed to file the necessary motion in a timely manner. Neither Mr. Pavlov, nor his creditors, should be punished for the failings of counsel.

IV. CONCLUSION

The Eleventh Circuit has issued a ruling which controls the matter before the Court. The Circuit has ruled on very similar facts that "the doctrine of judicial estoppel was improperly invoked," Id at 1274. As in Parker, Supra, the Trustee has succeeded to Mr. Pavlov's interest and even if Mr. Pavlov made a misstatement, the Trustee is not subject to estoppel; therefore, this matter should proceed.

This 8th day of February, 2006

S/ROBERT W. CULLEN
Robert W. Cullen
State Bar No: 200338
Attorney for Plaintiffs
1401 Peachtree Street
Suite 500
Atlanta, Georgia 30309
Telephone (404) 870-3540

**IN THE UNITED STATES DISTRICT COURT
NORTHER DISTRICT OF GEORGIA
ATLANTA DIVISION**

VELIMIR PAVLOV and
DUMITRA PAVLOV,

Plaintiffs

v.

CIVIL ACTION FILE
NO.: 1:03-CV-1647-JOF

INGLES MARKETS, INCORPORATED, GREG TOLBER, OFFICER C.E. MORRIS (BADGE 150), in his individual and official capacities, POLICE CHIEF W.H. DEAN, in his individual and official capacities, and GWINNETT COUNTY, GEORGIA,

Defendants.

AFFIDAVIT OF VELIMIR PAVLOV

COMES NOW, Velimir Pavlov, an adult citizen of the United States and resident of the Northern District of Georgia.

1.

I am a native of Romania. English is my second language; hence, sometimes I have difficulty understanding or fully communicating my thoughts in the English language.

2.

In March of 2005, I realized that financially, I had reached a desperate situation. Therefore, I filed a Chapter 13 Petition in the United States Bankruptcy Court for the Northern District of Georgia, Gainesville Division. My case is styled re: Velimir Pavlov, Petition No.: 05-20881-REB, United States Bankruptcy Court, Northern District of Georgia, Gainesville Division.

3.

My case was actually filed April 2005. Thereafter, I attended a 341(a) meeting of creditors.

4.

When I first retained counsel in my Chapter 13 proceeding. I disclosed the pendency of this action. In my initial petition, this case was listed. I do not know whether or not it was listed on the proper schedule.

5.

At the 341(a) meeting, counsel for the Trustee, Mr. George Shaw, questioned me about this case. Mr. Shaw instructed me that I could not settle or compromise this case without the approval of the Bankruptcy Court. I understood the only other way I could Settle this case, was to pay all of my debts, including any interest or penalties accrued since the filing of this action.

6.

I further understood that the attorney which my wife and I had retained in this matter would have to be appointed by the Bankruptcy Court to represent the interests of the Trustee and myself.

7.

My wife is not a debtor in this or any other Bankruptcy action. The funds used to retain Mr. Cullen were my wife's separate assets.

8.

I am current on my bankruptcy plan payments as of the date of this affidavit.

9.

It was not until Defendant Ingles Market, Inc. filed thei
Second Motion for Summary Judgment, that I understood m
bankruptcy attorney had failed to file the Application fo
Special Counsel. It is my understanding that the Applicatio
for the Appointment of Special Counsel was filed February 7
2006.

10.

I did not intend to hide the pendency of this action from th
Bankruptcy Court. Since the Trustee's Counsel fully explored
the issues and instructed my counsel as to what needed to be
done, I, in good faith, believed that my obligation, in terms o
Bankruptcy disclosure had been fully met.

Affiant saith nothing further.

This 8th day of February, 2006.

S/VELIMIR PAVLOV
VELIMIR PAVLOV

Sworn and subscribed before me
This 8th day of February, 2006.

S/ROBERT W. CULLEN
Notary Public
My commission expires: February 7, 2007

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

VELIMIR PAVLOV and
DUMITRA PAVLOV,

Plaintiffs

v.

CIVIL ACTION FILE
NO.: 1:03-CV-1647-JOF

INGLES MARKETS, INCORPORATED, GREG TOLBER, OFFICER C.E. MORRIS (BADGE 150), in his individual and official capacities, POLICE CHIEF W.H. DEAN, in his individual and official capacities, and GWINNETT COUNTY, GEORGIA,

Defendants.

AFFIDAVIT OF ANGELA LITTLE HAMILTON

COMES NOW, Angela Little Hamilton, a citizen of the United States and resident of Georgia and affirms as follows:

1.

I am a member in good standing of the State Bar of Georgia and the Bar of the United States of Bankruptcy Court for the Northern District of Georgia.

2.

I represent Mr. Velimir Pavlov in a Chapter 13 Bankruptcy action, filed April 7, 2005, in the United States Bankruptcy Court for the Northern District of Georgia. In re: Velimir Pavlov, Petition No.: 05-20881-REB.

3.

I continue to represent Mr. Pavlov in this bankruptcy case.

4.

Mr. Pavlov informed me of the pendency of this action at our first interview. Pavlov, et al. v. Ingles Market, Inc., Civil Action File No.: 1:03-CV-1647-JOF, was listed in the Statement of Financial Affairs, number 4 of the Bankruptcy schedules.

5.

Mr. Pavlov attended the 341(a) meeting of creditors with Mr. Robert Barcus, Esquire, employed as a contract attorney by our firm. Our business records reflect that this case was, in fact, discussed and revealed at the meeting of creditors.

6.

The Trustee's Office requested that we move the Appointment of Special Counsel to represent the estate in this matter. The schedules were amended to reflect Ingles Market, Inc., as a possible creditor on June 8, 2005. Due to a misunderstanding, the Motion for Appointment of Special Counsel was not filed until February 7, 2006.

7.

I personally discussed the lawsuit with the attorney for the Trustee, Mr. George Shaw, following the meeting of creditors. It was clear that Mr. Shaw was fully appraised of the pendency of this action.

8.

My office has attempted to obtain the tape of the 341(a) hearing, so the same could be transcribed. Unfortunately, the Trustee's Office determined the tape was unintelligible and could not be transcribed.

9.

Finally, it was my understanding from our associated counsel, Mr. Robert Barcus, that the Trustee had discussed the matter at the meeting of creditors and the necessity to have Mr. Cullen appointed as Special Counsel.

This information is reflected in our contemporaneous file notations and records.

10.

I filed an application to employ special counsel on February 7, 2006, asking the Bankruptcy Court to appoint Mr. Robert W. Cullen as special counsel to represent the Trustee in this matter.

Affiant saith nothing further.

This 8th day of February, 2006.

S/ANGELA LITTLE HAMILTON
ANGELA LITTLE HAMILTON
Georgia Bar No.: 454087

Sworn and subscribed before me
This 8th day of February, 2006

S/ROBERT W. CULLEN
Notary Public
My commission expires: February 7, 2007

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

VELIMIR PAVLOV and
DUMITRA PAVLOV,

Plaintiffs

v.

CIVIL ACTION FILE
NO.: 1:03-CV-1647-JOF

INGLES MARKETS, INCORPORATED, GREG TOLBER, OFFICER C.E. MORRIS (BADGE 150), in his individual and official capacities, POLICE CHIEF W.H. DEAN, in his individual and official capacities, and GWINNETT COUNTY, GEORGIA,

Defendants.

CERTIFICATE OF SERVICE

This is to certify that on February 8, 2006, I electronically filed the Plaintiff's Response to Defendant Ingles Markets, Inc.'s Second Motion for Summary Judgement with supporting affidavits, to the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the following attorney on record:

Mr. Walter B. McClelland
Attorney at Law
Mabry & McClelland, LLP
2200 Century Parkway, N.E., Tenth Floor
Atlanta, Georgia 30345

This 8th day of February, 2006.

Respectfully submitted,

S/ROBERT W. CULLEN
Robert W. Cullen
State Bar No.: 200338
Attorney for Plaintiffs
1401 Peachtree Street
Suite 500
Atlanta, Georgia 30309
Telephone (404) 870-3540

QUESTION 3

The conspiracy started with the attorney from criminal case Benjamin Guile III. He told me not to come to the pre-trial hearing. I made a mistake, I listened to him and I did not go. Please look at the 4 pictures from pages 2, 3. This is the way I have been assaulted by Ingles' employees and Officer Morris. There were over 50 witnesses at this incident at 6 pm in Ingles Markets, Inc. parking lot.

At the criminal trial, Jeffrey Meeks testified that he put me down. He is a lying witness, I never saw him in my life until the trial. The person that put me down was Ingles Manager Tim Arnold. At the criminal trial I told my attorney, Benjamin Guile III that Meeks is not the person that put me down. He said to let it go that it will help us at the civil trial. I should not have let it go, but you listen to your attorney.

At trial I was found not guilty of all charges. I paid him $6,500.00 and he and another attorney were supposed to take the civil case on percentage.

He lied to us. He did not take the civil case. There were over 50 witnesses at this incident and because of attorney Benjamin Guile III, I ended with no witnesses. He tried to cover up everything.

We signed a contract with attorney Paula J. McGill. We paid her $6,500.00 an 40% of the lawsuit.

She refused to take depositions from key witnesses and from Ingles Managers. I asked her in writing 3-4 times to take the depositions and she refused.

I filed with the District Court about her conspiracy and about Benjamin Guile III's refusal to release the 911 phone tapes from the incident, copy of the list of witnesses and the detail of activity of my check card on the day of the incident. I told the court that they are hiding the evidence from the court and us. The District Court did nothing about it.

Also we asked the court to investigate Officer Morris because he was lying under oath in two courts of United States. District Court refused to investigate Officer Morris.

Attached is Page AP21 (marked attachment "A") from the court order by Judge J. Owen Forrester from June 30, 2004. On the bottom of the Page AP21 is the court's decision. The court order is attached at Appendix.

The District Court did not care about the conspiracy. The court accepted the conspiracy of Officer Morris with Ingles Markets employees and the conspiracy of my attorneys with Ingles Markets Inc.

Attorney Paula J. McGill withdrew from the case. Attorney Paula J. McGill did not give us any evidence. She lied in the court that she gave it to us. She lied!

I filed pro se one year.

On my own I took depositions of Ingles Markets employees.

The court has already granted numerous extensions of discovery in this case. The court ORDERS that the discovery period ends forty-five (45) days after the date of this order. This is the final extension of discovery. Motions for summary judgement are due within twenty (20) days after the close of discovery.

IV. Miscellaneous Matters

Plaintiffs are proceeding pro se in this litigation and have filed numerous "requests" with the court.[1] The court reminds Plaintiffs that even though they are proceeding pro se, they must still follow the Local Rules of this court. Those rules are available at the court's website, http://www.gand.uscourts.gov/localrules.htm, or by coming to the Clerk's Office on the 22nd floor of the Richard B. Russell Federal Building at 75 Spring Street, Atlanta, Georgia 30303.

[1]Plaintiffs ask the court to open a federal investigation of Officer Morris for lying under oath during his deposition. Plaintiffs also inform the court that they are having certain disagreements with their prior counsel, Paula McGill. Finally, Plaintiffs inform the court that Gwinnett County has not responded to their Open Records Act request. The court determines that these matters are not directly related to the civil lawsuit pending before the court. At this time, the court will not pursue these matters further.

ATTACHMENT "A"

This is the way I found the name of manager Tim Arnold. He is the one who put me down in the parking lot and not Jeffrey Meeks. I knew how he looked but I did not know his name. I knew the way the participants in the attack looked but I did not know their names. In this way I found that the man who pulled the gun on me is manager Shane Halley. I found a few more participants in the attack.

Attorney Benjamin Guile III and Attorney McGill hid the evidence from me and the court. They conspired with Ingles Markets Inc. to make sure there is no evidence.

In April 2005 we hired attorney Robert W. Cullen. We paid him $8,000.00 and 40% of the law-suit. We paid him to conspire with Ingles Markets Inc. against us. He was hiding evidence from us and from the court. We filed 92 pages with the court, in paragraph 5 filed with the court on April 24, 2006, proving his conspiracy.

In Paragraph 1 filed with the court on April 24, 2006 we let the court know about the conspiracy of attorney Angela Hamilton and Attorney Robert W. Cullen with Ingles Markets Inc. to have the case dismissed. Page j, jj, jjj and jv attachment Cullen.

We are asking the Supreme Court to grant the writ of certiorari and not to promote the attorney's conspiracy in American courts because this will lead to a lot of crimes in American Society.

FILED IN CLERK'S OFFICE
J.S.D.C -Atlanta
APR 24 2006
LUTHER D. THOMAS, Clerk
by S/JKP
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VELIMIR PAVLOV and
DUMITRA PAVLOV,

Plaintiffs

v.

CIVIL ACTION FILE
NO.: 1:03-CV-1647-JOF

INGLES MARKETS, INCORPORATED,
ET AL. AND OFFICER C.E. MORRIS
(BADGE 150), POLICE CHIEF
W.H. DEAN, and GWINNETT COUNTY,
GEORGIA.

Defendants.

I certify that on April 24, 2006 I filed with the clerk's office:

1. Brief to support reconsideration of the opinion and order dated April 11, 2006.

2. Attachment "A1" - 2 pages

3. Attachment "A2" - 30 pages

4. Attachment "A3" - 2 pages

5. Attachment "B" - correspondence with attorney Robert W. Cullen - 92 pages

6. Exhibit "1" - bankruptcy files filed by Ingles Markets with the court.

April 24, 2006

Respectfully,

S/DUMITRA PAVLOV
S/VELIMIR PAVLOV
Dumitra Pavlov
Velimir Pavlov

Dumitra & Velimir Pavlov
6935 Valley Forest Drive
Cumming, GA 30041
678-464-0508
678-947-0289

ATTACHMENT
"CULLEN"

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VELIMIR PAVLOV and
DUMITRA PAVLOV,

Plaintiffs

CIVIL ACTION FILE
NO.: 1:03-CV-1647-JOF

v.

INGLES MARKETS, INCORPORATED,
ET AL, AND OFFICER C.E. MORRIS
(BADGE 150), POLICE CHIEF
W.H. DEAN, and GWINNETT COUNTY,
GEORGIA,

Defendants.

CERTIFICATE OF SERVICE

I certify that on April 24, 2006 I filed with the clerk's office:

I certify that on April 24, 2006 I served copy of the same in the United States mail, certified to the following:

Walter B. McClelland
2200 Century Parkway N.E.
Tenth Floor
Atlanta, GA 30345

Robert W. Cullen
Attorney At Law
1401 Peachtree St.
Suite 500
Atlanta, GA 30309

April 24, 2006

Respectfully,

S/DUMITRA PAVLOV
S/VELIMIR PAVLOV
Dumitra Pavlov
Velimir Pavlov

Dumitra & Velimir Pavlov
6935 Valley Forest Drive
Cumming, GA 30041
678-464-0508
678-947-0289

QUESTION 4

My case was dismissed because of the mistakes and conspiracy of my attorneys with Ingles Markets Inc.

Attorney Angela Hamilton testifies in her affidavit at Paragraph 4 that I disclosed the law-suit from the beginning and she listed the law-suit at Financial Affairs Paragraph 4 of bankruptcy files. Please see her Affidavit in previous pages of the writ, Pages D14, D15 and D16. Please see also Pages 9, 9a, 9b, 9c of the writ, Attachment 9. The bankruptcy was filed on 04/07/05.

Attorney Angela Hamilton is testifies in the affidavit that I disclosed the law-suit to the trustee and to attorney Robert Barcus representing her at 341 meeting. Please see paragraphs 5-9 of Angela Hamilton affidavit in previous pages of the writ Pages D14, D15.

I disclosed properly the law-suit. Please see pages 7, 7a, 8 of the writ. "Objection to Confirmation". Paragraph 3 is proving that I properly disclosed the law suit to the trustee and to attorney Robert Barcus at 341 meeting and the trustee is asking for application for special counsel as a result of my disclosure of the law-suit.

My attorney in the case, Robert W. Cullen filed the pre-trial and listed the bankruptcy at page G1-49, G1-49a Attachment - G1 Paragraph 17: "Mr. Pavlov's Bankruptcy Filing." He filed the pre-trial on 06/06/05 two months after I filed the bankruptcy (see next page).

For next 7 months he refused to file for special counsel.

Attorney Robert W. Cullen and attorney Angela Hamilton refused to file for application for special counsel for next 7 months to have my case dismissed and they succeeded. This is a conspiracy done with Ingles Markets Inc.

After the Ingles Markets, Inc. request to dismiss the case, in January 2006, attorney Robert W. Cullen and attorney Angela Hamilton filed for application for special counsel and was approved by the bankruptcy court. A copy is attached in appendix pages i ; ii; iii.

ATTACHMENT "G-1"

1. 911 Incident History Detail, Gwinnett Count Police Department

2. Incident report of Officer C.E. Morris

3. Supplemental report of Officer M.R. Hart

4. List of employees working at the Ingles grocery store in Dacula, Ga. on May 28, 2001

5. Employee Change of Status Form for Shane Haley

6. Time card for Shane Haley for the week including May 28, 2001.

7. Mr. Pavlov's Medical Records relating to the injuries he sustained and such records required to demonstrate that these are new conditions.

8. Photographs of Mr. Pavlov, taken after incident.

9. Time card for Tim Arnold for the week including May 28, 2001.

10. All time cards for employees working the pay period including May 28, 2001.

ATTACHMENT "G-1" - continued

11. Transcript of Trial by Jury in the State of Georgia v. Velimir Pavlov.

12. Documents from Bank of America showing activity detail of activity on the account of Plaintiffs.

13. Registrations of vehicles identified by subpoena to Georgia Department of Motor Vehicles

14. Record of Ingles credit card processor for use of Pavlov's card on May 28, 2001.

15. Mr. Pavlov's medical bills since the incident

16. Mr. and Mrs. Pavlov's tax returns from 1997 to present

17. Mr. Pavlov's bankruptcy filing.

This is proving the conspiracy of attorney Robert W. Cullen and attorney Angela Hamilton with Ingles Markets, Inc. To have the case dismissed. Because they did not file in time for application for special counsel, Ingles Markets Inc. said I did not disclose the law-suit and that I tried to conceal the law-suit to do not pay the bankruptcy. These are false accusations because I disclosed the law-suit properly.

We are asking the Supreme Court to do not promote attorney's conspiracy in American courts and to grant the writ of certiorari and Ingles Markets Inc. to be tried for their acts of conspiracy in this case.

QUESTION 5

Nobody wants to go shopping at supermarket and be attacked, assaulted, beaten up and arrested for criminal trespassing, cruelty to children, simple battery and other 3 false charges, because I was beaten up by Ingles Markets Inc. employees and officer C.E. Morris. Please look at the 4 pictures on pages 2;3.

Officer Morris booked me with 6 charges. Please see the Pages 22 and 22a - Booking report from Gwinnett County Sheriff's Department, Georgia.

Any police officer that has to book somebody at jail has to tell the charges. He charged me with 6 counts.

Please see pages 23 and 23a that is page 104 from Pavlov's criminal trial. At lines11 and 12 Officer Morris is telling the court that the officers have to tell the charges to the jail when they book somebody, and he did, he booked me for 6 counts.

Next day Ingles Markets Inc. dropped the 3 charges: criminal trespassing, cruelty to children and simple battery.

Gwinnett County
Sheriff's Department

R.L. (Butch) Conway, Sheriff

2900 University Parkway
Lawrenceville, GA 30043
(770) 822-3100 Fax (770) 822-3115

Wayne Bolden
Chief Deputy
Gary Lancaster
Jail Administrator

To: Leigh Gafford

From: Gwinnett Co. Sheriff's Dept. I.D. Section

Subject: Correction on GCIC information

Date:

On 05-29, 01 our department sent GCIC information (via Identix) to your agency. The information sent under the name of Pavlov, Velimir, OCA # 99078827 was incorrect due to a clerical error.

Information sent:
Name: Pavlov, Velimir
DOB: 01-20-1948
SSN: 546-57-8136
Charges: Obstruction of Officer (3 counts)
Battery
Cruelty to Children
Criminal Trespass

Correct information:
Name: Same
DOB: Same
SSN: Same
Charges: Obstruction of officer (1 count)

Additional Info: All information is the same but he was only charged with one count of obstruction of law enforcement officer (F) (No other charges)

000003

Georgia Gwinnett County
This is to certify that this is a
true and correct copy of document(s)
as the same appears on record in
Gwinnett County Jail Records
This4 day of February/ 2002
S/BERNICE KIRBY
Records Clerk, Gwinnett County Jail
Gwinnett County, Georgia

Office has charged him with, as we do. What he told the jail to book him with or anything like that is not relevant at all. What he's charged with here today, the District Attorney's Office has charged him with.

THE COURT: Well, the officer has testified on direct on this very issue, and I think the defense counsel is entitled to follow up with what his direct testimony was.

BY MR. GUILE:

Q. So you told the jail what to book him for?

A. When you enter someone into the jail, you have to sign them in and tell them what the charge is. So I did.

Q. Thank you. And how long after the incident did yo write up this report, your police report?

A. It was after he was booked into the jail. So I don't remember the time frame. Once I took him

the hospital and to the jail and to see the magistrate, tell him the facts of the case, get a warrant, serve the warrant on him, and then I wrote up the report. So that took at least an hour and a half after going through those procedures.

Q. Okay. So that was a relatively recent report; is that correct?

At the jail I had to sign a restraining order in the name of Ingles Markets Inc. manager Greg Tolbert.

The police also dropped 2 charges and was left only a false charge: obstruction of police officer with $11,050.00 cash bond. Next day I got out of jail.

Here the conspiracy started. On false testimonies of Ingles Markets Inc. employees and false testimony of Officer Morris the grand jury indicted me on 3 counts. At criminal trial I was found not guilty of all 3 charges.

At the civil law-suit against Ingles Markets Inc. my attorney Paula J. McGill conspired with Ingles Markets Inc. against me. She refused to take depositions from key witnesses and Ingles managers. At repeated requests in writing to take the deposition she withdrew from the case and I had to take the depositions myself.

Attorney Robert W. Cullen and bankruptcy attorney Angela Hamilton conspired with Ingles Markets Inc. to have the case dismissed.

Attorney Robert W. Cullen and attorney Angela Hamilton since May, 2005 until January 2006, for period of 7 months refused to file for application for special counsel and only after Ingles Markets Inc. complained that I did not file for application for special counsel with the intention to conceal the lawsuit and not pay the bankruptcy. It is not true that I didn't disclose the lawsuit. My attorneys conspired with Ingles Markets Inc. to have the law-suit dismissed.

Only in February 2006, after the Ingles complain, my attorneys filed for application for special counsel and the bankruptcy court approved it. Please see pages i, ii and iii from appendix.

Why are the Lower Courts punishing me for my attorney's conspiracy?

We ask the Supreme Court to not allow and promote attorney's conspiracy in American court and to grant the writ of certiorari and Ingles to be tried in court.

QUESTION 6

The claims of Dumitra Pavlov are independent from the claims of her husband, Velimir Pavlov.

She is not a debtor in my bankruptcy or any other bankruptcy.

The Judicial estoppel can not be applied against her claims because there is no bankruptcy involved.

She has to suffer every day as a result of the physical, moral and mental damages done by Ingles Markets Inc. to her husband, Velimir Pavlov. She has to do all the hard work around the house because of my back pains, left hand pains, headaches, migraines, dizziness. Because of my dizziness she has to drive most of the time for the safety of our son and our family.

We ask the Supreme Court to grant the writ of certiorari and to not let Ingles Markets Inc. get away with the 7 years of conspiracy committed with our attorneys and the crimes committed against our family.

CONCLUSION AND CITATIONS

My wife Dumitra Pavlov is not part of my bankruptcy or any other bankruptcy and her claims are separate and independent from her husband's claims and her claims should proceed.

What did the District Court and Court of Appeals Eleventh Circuit expect me to do to compel attorney Angela Hamilton and attorney Robert W. Cullen to do their jobs and not conspire against us? Did they expect me to keep them at gun point to do their jobs?

I could not do that!

We are asking the Supreme Court to grant the writ of certiorari and the law-suit against Ingles Markets Inc. to proceed.

Eleventh Circuit has issued a ruling which controls the matter before the court. The circuit has ruled on very similar facts that "The Doctrine" of judicial estoppel was improperly invoked ID at 1274. As in Parker, Supra the trustee has succeeded in Pavlov's claims and interest and even if a misstatement was made, the trustee is not subject to estoppel; therefore, the law-suit should proceed.

In Pavlov's case the Court of Appeals Eleventh Circuit said in the court order from June 6, 2007 (attached in the appendix) that do not see intervention of the trustee. In conclusion the trustee abandon the claims to Pavlov and the law-suit should proceed.

I will cite the words of Senator Carl Schurz, 1872:

"My country, right or wrong; if right to be kept right; and if wrong to be set right."

APPENDIX

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

ENTERED ON DOCKET
3/23/06

IN RE:	§	CASE NO. 05-20881-REB
	§	
	§	
Velimir Pavlov	§	CHAPTER 13
Debtor(s)		

ORDER
ON APPLICATION TO EMPLOY SPECIAL COUNSEL

The Debtor's Application to Employ Special Counsel pending before the Court and the Court being satisfied that said attorney represents no interest adverse to the Debtor or the estate in the matters upon which counsel is to be employed, that the employment of counsel is necessary and would be in the best interest of this estate, that the case justifies counsel for the purposes specified, no adverse interest being represented, and the motion and affidavit of special counsel having alleged that the retainer was paid by the non-filing spouse and not from the estate;

IT IS HEREBY ORDERED that the Debtor is authorized to retain and employ Robert W. Cullen as his attorney to render the professional services required in connection with this proceeding in accordance with the general retainer terms and projected billing procedure outlined in the Debtor's Application to Employ Special Counsel.

IT IS FURTHER ORDERED that the Debtor's counsel

shall file an application for payment of compensation upon settlement of said case. There shall be no disbursement of any proceeds without further Order of the Court.

SO ORDERED in Atlanta, this 21st day of March, 2006.

S/ROBERT E. BRIZENDINE
ROBERT E. BRIZENDINE
UNITED STATES BANKRUPTCY JUDGE

(signatures on next page)

IN RE:

Velimir Pavlov
Case No. 05-20881-REB
Page 2 - Order on Application to Employ Special Counsel

Presented by:

S/ANGELA LITTLE HAMILTON
Angela Little Hamilton, GBN 454087
Attorney for Debtor
543 E. Lanier Avenue
Fayetteville, GA 30214
(770) 716-0140

No Opposition to:

S/GEORGE A. SHAW, JR.
George A. Shaw, Jr., GBN 638350
Attorney for Chapter 13 Trustee
Suite 1100 - The Equitable Building
100 Peachtree Street, NW
Atlanta, GA 30303

Consented by:

S/ROBERT W. CULLEN (by A. Hamilton 454087 with express permission)
Robert W. Cullen, GBN 200338
1401 Peachtree Street
Suite 500
Atlanta, GA 30309
(404) 870-3540

18316007757014

(DO NOT PUBLISH)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-16011
Non-Argument Calendar

D.C. Docket No. 03-01647-CV-JOF-1

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUNE 6, 2007
THOMAS K. KAHN
CLERK

VELIMIR PAVLOV,
DUMITRA PAVLOV,

Plaintiffs - Appellants

versus

INGLES MARKETS, INC.
GWINNETT COUNTY

Defendants-Appellees

GREG TOLBERT, et al.,

Defendants

Appeal from the United States District Court
for the Northern District of Georgia

(June 6, 2007)
AP1

Before BIRCH, BARKETT and PRYOR, Circuit Judges.
PER CURIAM:

Velimir and Dumitra Pavlov (collectively "the Pavlovs"), proceeding pro se, appeal the district court's April 11, 2006, grant of summary judgement to defendant Ingles Markets, Inc. ("Ingles") on various state-law claims, and the district court's subsequent denial of a motion to reconsider.[1] The district court granted Ingles summary judgement, finding that Velimir Pavlov was judicially estopped from pursuing these claims because he had failed to disclose the instant litigation as an asset in his Chapter 13 bankruptcy.[2]

"We review the district court' s application of judicial estoppel for abuse of discretion." Burnes v. Pemco Aeroplex, Inc., 291 F.3d 1282, 1284 (11th Cir. 2002) (internal citation omitted). We review the denial of a motion to reconsider for an abuse of discretion. Fla. Ass'n of Rehab. Facilities, Inc. v. State of Fla. Dept. of Health and Rehab. Serv., 225 F.3d 1208, 1215 (11th Cir. 2000).

After careful consideration of the briefs of the parties, and thorough review

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[1] The district court had previously granted summary judgment to defendants Gwinnett County, police officer C.E. Morris, and police chief W.H. Dean (collectively, "the Gwinnett County defendants"), and had dismissed defendant Greg Tolbert from the case. While the Pavlovs' identified this March 22, 2005, order in their notice of appeal, they do not argue these issues on appeal and have, therefore, abandoned them. See Allison v. McGhan Medical Corp., 184 F.3d 1300, 1317 n. 17 (11th Cir. 1999).

[2] As a debtor in a Chapter 13 bankruptcy, Velimir Pavlov retains standing to pursue legal claims. See Crosby v. Monroe County, 394 F.3d 1328, 1331 n.2 (11th Cir. 2004).

of the record, we find no reversible error. The district court correctly determined that judicial estoppel could be applied against the Pavlovs" claims, despite any interest of the bankruptcy Trustee in the causes of action as the property of Velimir Pavlov's bankruptcy estate. See Burnes v. Pemco Aeroplex, Inc., 291 F.3d 1282, 1284 (11th Cir. 2002); De Leon v. Comcar Indus., Inc., 321 F.3d 1289 (11th Cir. 2003). Although we held in Parker v. Wendy's Int'l, Inc., 365 F.3d 1268 (11th Cir. 2004), that the district court had abused its discretion in applying judicial estoppel because the plaintiff's cause of action was the property of her Chapter 7 bankruptcy estate, we find that case distinguishable. In Parker, judicial estoppel could not be applied against the bankruptcy Trustee who had made no inconsistent statements and who intervened as a party-plainteiff in the underlying lawsuit; however, in this case there has been no appearance of any Trustee, through intervention or otherwise. The record in this case leads us to conclude that there was no abuse of discretion in the application of judicial estoppel or in the denial of Pavlovs' motion to reconsider.

AFFIRMED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

VELIMIR PAVLOV and DUMITRA PAVLOV, Plaintiffs	:	CIVIL ACTION NO. 1:03-CV-1647-JOF
v.	:	
INGLES MARKETS, INC. Defendant.	:	

ORDER

This matter is before the court on Plaintiffs' for reconsideration [180-1].

In an order dated April 11, 2006, the court found that Plaintiff was judicially estopped from raising his claims in the instant litigation because of inconsistent positions he made concerning the litigation during his Chapter 13 bankruptcy proceedings. The court also found that Plaintiff could not transfer his interest in the instant litigation to a bankruptcy trustee under Chapter 13 proceedings. The court granted Defendant's motion for summary judgment and dismissed Plaintiff's complaint.

Proceeding pro se, Plaintiffs then filed the instant motion for reconsideration. Plaintiff asserts that his attorneys have conspired with Defendant's attorneys to get his case dismissed. He also contends that it was his bankruptcy attorneys who filled out the bankruptcy applications, and their incompleteness

should not be held against him. As the court explained in its previous order, however, error of counsel is not a sufficient reason to bar the application of judicial estoppel. See Barger v. City of Cartersville, 348 F.3d 1289, 1295 (11th Cir. 2003). For the reasons stated in the court's prior order, the court DENIES Plaintiffs' motion for reconsideration [180-1].

IT IS SO ORDERED this 13th day of October 2006.

s/J. Owen Forrester
J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

VELIMIR PAVLOV and DUMITRA PAVLOV, Plaintiffs	:	CIVIL ACTION NO. 1:03-CV-1647-JOF
v.	:	
INGLES MARKETS, INC. Defendant.	:	

OPINION AND ORDER

This matter is before the court on Defendant's motion for leave to file an untimely motion for summary judgment [165-1] and Defendant's motion for summary judgment [166-1].

The court has reviewed the procedural and substantive history of this litigation in previous orders. Shortly before the case was scheduled to go to trial, Defendant filed the instant motion for summary judgement[1] contending that Plaintiff's claims were barred by judicial estoppel or in the alternative, contending that Plaintiff, Velimir Pavlov, did not have standing to pursue the claims because the lawsuit was an asset of Mr. Pavlov's bankruptcy

[1]The court GRANTS Defendant's motion for leave to file an untimely motion for summary judgment [165-1].

estate. e. Therefore, Defendant asserts, the claim is the bankruptcy trustee's and not Mr. Pavlov's.

Plaintiffs filed this suit on May 14, 2003. On April 7, 2005, Plaintiff Velimir Pavlov, filed a voluntary petition for Chapter 13 bankruptcy. Mr. Pavlov was represented by counsel during the bankruptcy. In his original bankruptcy petition, Plaintiff stated there were no contingent or unliquidated claims but did list the case under "suits and administrative proceedings." The case was described as "Plaintiffs request of deposition of Ingles employees." Plaintiff's proposed plan allowed for unsecured creditors to be paid 16 cents on the dollar. On May 17, 2005, the Bankruptcy Trustee filed an objection to the plan and requested the appointment of a special counsel. On June 8, 2005, Plaintiff amended his debtor's plan and reduced the dividend to unsecured creditors to 6 cents on the dollar. He also amended his petition to show this litigation as a debt (creditors holding secured claims) of $3,642.25 pursuant to a judgement entered on March 22, 2005. Plaintiff's plan was confirmed on August 19, 2005.

Mr. Pavlov has filed an affidavit in which he states that he discussed the litigation in a 341(a) meeting of creditors during his bankruptcy and that the Standing Chapter 13 Trustee, Mr. James Bone, instructed Mr. Pavlov that he could not settle the suit without the consent of the bankruptcy court. Mr. Pavlov was also instructed to file a motion for appointment of special counsel but failed to do so at that time. After the filing of the instant motions, his bankruptcy attorney filed a motion for appointment of special counsel on February 7, 2006.

Judicial estoppel is an equitable doctrine designed to protect the integrity of the judicial system. It prevents a "party . . . from 'asserting a claim in a legal proceeding that is inconsistent with a claim taken by the party in a previous proceeding.'" *Billups vs. Pemco Aeroplex, Inc. (In re Burnes)*, 291 F.3d 1282, 1295 (11th Cir. 2002); see also *De Leon v. Comcar Industries, Inc.*, 321 F.3d 1289, 1291 (11th Cir. 2003) (applying judicial estoppel doctrine described in *Burnes* to Chapter 13 proceeding). The inconsistent positions must have been taken under oath in a prior proceeding, and the inconsistencies "must be shown to have been calculated to make a mockery of the judicial system." Burnes, 291 F.3d at 1285.

In *Burnes*, the court first concluded that the plaintiff had submitted inconsistent position under oath because he failed to list a pending employment discrimination suit in his bankruptcy proceeding. The plaintiff, however, argued that he did not have any intent to mislead the bankruptcy court, but rather that his omission of the employment discrimination suit was inadvertent. *Id.* at 1286. The court stated that "deliberate or intentional manipulation" could be "inferred from the record." *Id.* at 1287. "The debtor's failure to satisfy its statutory disclosure duty is 'inadvertent' only when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment." *Id.* (quotation and citation omitted)

From the record before the Burnes court, it inferred that the debtor intentionally attempted to manipulate the bankruptcy proceedings. First, the debtor filed his employment

discrimination claims during the pendency of his Chapter 13 case but did not amend his petition. *Id.* at 1287-88. Further, when the debtor asked that his Chapter 13 case be transferred to a Chapter 7 case, he again failed to list the asset of the litigation. *Id.* The court also concluded that the debtor had something to gain from the concealment because it is unlikely the court would have approved the conversion of the bankruptcy to Chapter 7 with a complete discharge had all the parties been aware of the debtor's asset of litigation. The court refused to permit the debtor to reopen his bankruptcy case to amend his filings to reflect the litigation.

The Eleventh Circuit appeared to take a step back from *Burnes* in *Parker v. Wendy's Int'l. Inc.*, 365 F.3d 1268, 1272 (11th Cir. 2004) ("based on our analysis . . ., it is questionable as to whether judicial estoppel was correctly applied in *Burnes*"). There, the plaintiff also did not list her employment discrimination lawsuit as an asset in her Chapter 7 bankruptcy proceeding. The district court had applied judicial estoppel and held that the bankruptcy trustee could not pursue the litigation due to the debtor's actions. The Eleventh Circuit reversed and held that the real party in interest was no longer the debtor but rather the trustee. Because the trustee had not made inconsistent statements to the court, the trustee could not be judicially estopped from pursuing the cause of action. *Id.* at 1272.

It is axiomatic that Parker, as a newer panel opinion, cannot overrule Burnes. Furthermore, the fact that Plaintiff's bankruptcy here was under Chapter 13 complicates the analysis. Unlike Chapter 7 case where the litigation asset

becomes the property of the bankruptcy estate and therefore only the trustee has standing, in Chapter 13 proceedings , the debtor continues to be able to control the litigation. See *Crosby v. Monroe County*, 394 F.3d 1328, 1331 n.2 (11th Cir. 2004) (noting that because plaintiff "filed under Chapter 13 of the Bankruptcy Code, he retains standing to pursue legal claims on behalf of the estate. See 11 U.S.C. § 1303; Fed. R. Bankr. P. 6009"); see also *Olick v. Parker & Parsley Petroleum Co.*, 145 F. 3d 513, 515 (2d Cir. 1998). Thus, unlike the plaintiff in *Parker*, it is not clear that Mr. Pavlov could avoid the problems of non-disclosure by allowing the trustee to take up the reins of the litigation. In fact, in Parker, the court relied on the fact that the cause of action was the property of the Chapter 7 bankruptcy estate and that only the trustee in bankruptcy had standing to pursue it. *See id.*, 365 F.3d at 1272 (noting that only the trustee had standing to prosecute causes of action belonging to the estate).

The court first considers whether Mr. Pavlov is judicially estopped from bringing this claim. There is no dispute that Mr. Pavlov made representations to the bankruptcy court under oath. Further, there is no dispute that while Mr. Pavlov's first application listed the litigation as a suit or administrative proceeding in which he was involved, it did not describe the litigation as a potential asset. Furthermore, his amended application strangely characterized the litigation as a debt pursuant to judgment. Clearly, these positions are inconsistent with the positions he has taken in the instant litigation. Mr. Pavlov has testified that he told his attorney this information, and the attorney described it in the manner seen on the

application. However, his "attorney's omission is no panacea." *See Barger v. City of Cartersville*, 348 F.3d 1289, 1295 (11th Cir. 2003) (applying judicial estoppel). Furthermore, the fact that Mr. Pavlov testified that he disclosed the litigation in his 341(a) meeting with creditors, also, does not preclued the application of judicial estoppel. *Id.* at 1294-95 (holding the fact that the "[debtor] informed the trustee about her discrimination suit during the creditor's meeting does not aid her cause" because the full nature of the litigation was not disclosed). The court has no evidence before it of exactly what was described to Mr. Bone, the standing Chapter 13 trustee, or his agents, at the 341(a) meeting. The court does have Mr. Pavlov's amended bankruptcy petition which clearly does not fully disclose the nature of this litigation because it describes it as a debt of judgement of $3,642.25. The court does not know whether the trustee had any more accurate information. *See id.* at 1296 (applying judicial estoppel where debtor informed trustee only that she filed suit to be reinstated for her job and did not tell hi that she also sought backpay, liquidated damages, compensatory damages, and punitive damages).

Moreover, Mr. Pavlov clearly had knowledge of his suit, and he has something to gain from misrepresenting it to the bankruptcy court. After he listed the litigation as a "debt pursuant to judgement," the bankruptcy trustee apparently did not pursue the appointment of a special counsel, and Mr. Pavlov's repayment plan dropped from 16 cent on the dollar to 6 cents on the dollar. *See also De Leon v. Comcar Industries, Inc.* 321 F.3d 1289, 1291 (11th Cir. 2003) (noting that there is a financial motive to secret assets in the Chapter 13 proceedings

as well as Chapter 7 because amount of assets disclosed in Chapter 13 proceeding affects the amount to be discounted and repaid).[2] Thus, the court finds that Mr. Pavlov is judicially estopped from raising these claims.[3]

However, as noted above, the finding that Mr. Pavlov is judicially estopped does not end the matter because in Parker, the Eleventh Circuit recognized that the debtor is not the real party in interest and the bankruptcy trustee could pursue the action on behalf of the bankruptcy estate. The court finds that this option is not available under these circumstances. As an initial matter, as the court described above, *Parker* was a Chapter 7 bankruptcy proceeding where it is clear that ***only*** the bankruptcy trustee has standing to pursue the claim. In Chapter 13 proceedings, the debtor retains standing to pursue claims on behalf of the estate.

Furthermore, the chronology of events in Parker differs from that here. In Parker, the plaintiff filed a motion to reopen her bankruptcy proceedings and amend her bankruptcy schedules ***before*** the defendant in the civil suit filed a motion for relief asserting judicial estoppel.

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[2]The court notes that there is authority contrary to *De Leon* which finds that because creditors are paid out of the debtor's earnings and not the assets of the bankruptcy estate, a Chapter 13 debtor does not have any incentive to secret assets. *See, e.g., EEOC v Apria Healthcare Group, Inc.*, 222 F.R.D. 608, 613 n.3. (E.D.) Mo. 2004). This court, however, is bound by *De Leon*.

[3]Mr. Pavlov also notes that his wife has "independent" claims, such that even if the court were to conclude that his claims are judicially estopped, hers could proceed. Mrs. Pavlov, however, brings a claim of loss of consortium. This claim is derivative of Mr. Pavlov's claims and cannot stand alone. *See, e.g., Supchak v. Pruitt*, 232 Ga. App. 680, 684 (1998).

In contrast, here, Mr. Pavlov did not file his motion to reopen his bankruptcy proceedings until after Defendants filed a motion to dismiss based on judicial estoppel. This chronology is similar to that in *Barger, Burnes*, and *De Leon*, where defendants in all of those cases filed their motions to dismiss based on judicial estoppel prior to the plaintiff filing a motion to reopen the bankruptcy proceedings, and the court judicially estopped the debtors from pursuing their civil claims. *See De Leon*, 321 F3d at 1291-92 (applying judicial estoppel where debtor only amended his bankruptcy documents once civil suit defendant relied upon his failure to do so in its motion to dismiss pursuant to judicial estoppel); *Barger*, 348 F.3d at 1297 (finding plaintiff's efforts to reopen her bankruptcy proceedings did not impact judicial estoppel analysis for reasons set fort in *Burnes*); *Burnes*, 291 F.3d at 1299 ("Allowing [a debtor] to back-up, re-open the bankruptcy case, and amend his bankruptcy filings, only after his omission has been challenged by an adversary, suggests that a debtor should consider disclosing potential assets only if he is caught concealing them. This so-called remedy would only diminish the necessary incentive to provide the bankruptcy court with a truthful disclosure of the debtor's assets.") (citation omitted).

For the forgoing reasons, the court GRANTS Defendant's motion for leave to file an untimely motion for summary judgment [165-1] and GRANTS Defendants' second motion for summary judgment [166-1]. The Clerk of the Court is DIRECTED to DISMISS WITH PREJUDICE Plaintiff's complain.

IT IS SO ORDERED this 11th day of April 2006.

s/J. Owen Forrester
J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE

FILED IN CHAMBERS
6/30/04
Luther D. Thomas, Clerk
By: s/JCC
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

VELIMIR PAVLOV and DUMITRA PAVLOV, Plaintiffs	:	CIVIL ACTION NO. 1:03-CV-1647-JOF
v.	:	
INGLES MARKETS, INC. Defendant.	:	

ORDER

This matter is before the court on Plaintiffs' motion to extend discover [21-1]; Defendants' motion to compel [22-1]; Attorney McGill's motion to withdraw as counsel [24-1]; Plaintiffs' motion to extend time to respond to Defendants' motion to compel [27-1]; Plaintiffs' motion to extend time for Benjamin Guile to produce documents requested [34-1]; Plaintiffs' motion to extend time for Police Chief Dean to produce documents [35-1]; Plaintiffs' motion to extend time for Attorney McGill to produce documents [36-1]; Plaintiffs' motion to extend time for Defendant Ingles to produce documents [37-1]; Plaintiffs' motion for subpoenas [39-1]; Plaintiffs' motion for subpoenas [40-1]; and Plaintiffs' motion to extend time for Bank of America to produce documents [40-1].

1. Background

Plaintiffs, Velimir Pavlov, and his wife Dumitra Pavlov, filed suit against Defendants, Ingles Markets, Greg Tolbert, Officer C.E. Morris, Police Chief W.H. Dean, and Gwinnett County, in the Superior Court of Gwinnett County on May 14, 2003, alleging claims of assault, battery, unlawful detention, false imprisonment, false arrest, malicious prosecution, intentional infliction of emotional distress, negligent retention and hiring, and loss of consortium. Plaintiffs claim *inter alia* $500,000 in medical expenses and $200,000 in lost wages. Defendants removed the complaint to this court on June 12, 2003. At the time Plaintiffs filed their complaint, they were represented by attorney Paula J. McGill, Ms. McGill has filed a motion to withdraw as counsel. Since Ms. McGill and Plaintiffs ended their relationship, Plaintiffs have proceeded *pro se*.

Plaintiffs allege that on May 28, 2001, Velimir Pavlov entered the Ingles grocery store in Dacula , Georgia, and purchased groceries. On the way out of the store, Mr. Pavlov contends that he was physically assaulted by the store's assistant manager. Then, Greg Tolbert, the store's general manager, instructed employees to block Mr. Pavlov's car in the parking lot and to detain Mr. Pavlov. Mr. Pavlov further contends that one of the store's employees pulled a gun out and demanded money from him. Mr. Pavlov alleges that when Defendant Morris, a Gwinnett County police officer, arrived, he, too, began to accost Mr. Pavlov. Mr. Pavlov contends that he was beaten when he arrived at the Gwinnett County jail.

Officer Morris arrested Mr. Pavlov for trespassing, obstruction of as law enforcement office, child cruelty, and simple battery. Gwinnett County subsequently charged Mr. Pavlov with obstruction of a law enforcement officer, simple battery, and driving under the influence of alcohol. On March 27, 2002, a jury acquitted Mr. Pavlov of all charges

The court initially extended discovery until February 9, 2004, and then again until April 1, 2004. Acknowledging the sensitive nature of certain medical and financial records at issue, the parties entered into a protective order.

II. Motion to Withdraw as Counsel

Paula McGill filed a motion to withdraw as counsel on March 30, 2004 and gave Plaintiffs proper notice of her intention to withdraw. Accordingly, the court GRANTS Attorney McGill's motion to withdraw as counsel [25-1].

III. Motion to Compel

On March 26, 2004, Defendants Officer C.E. Morris, Police Chief W.H. Dean, and Gwinnett County, Georgia, filed a motion to compel. Plaintiffs' counsel requested an extension of time of 14 days to respond to Defendant's motion to compel. However, Plaintiffs still have not responded to this motion. In any event, the court GRANTS Plaintiffs' motion to extend time to respond to Defendants' motion to compel [27-1].

During discovery, Defendants requested from Plaintiffs all medical records and bills to support Plaintiffs' claim of $500,000 in medical damages. Plaintiffs' counsel apparently subpoenaed records from Dianne Bennett Johnson, M.D.; Gwinnett Hospital System; Physiotherapy Associates;

North Atlanta Medical Associates; Yitzchak Hermoni, M.D.; Arther Schiff, M.D.; and Coventry Health Care of Ga., Inc. Through Mr. Pavlov's deposition and insurance records provided by him, it appears that he also saw Dr. Zeigler; Atrium Open MRI; Dr. Wang; Dr. Fensilber; Dr. Smith; Affiliated Psychology Services; Dr. Mark Harris; Dr. Poland; and Dr. Siebert.

To the extent these records are in the possession of Plaintiffs, the court DIRECTS Plaintiffs to produce them to Defendants. If Plaintiffs do not have these documents, the court will not direct Plaintiffs to search and produce them for the benefit of Defendants. It appears to the court that Plaintiffs signed a release that would enable Defendants to subpoena these records. So long as Plaintiffs signed releases, Defendants may pursue these records through the discovery methods available to them. The court cautions both parties, however, that documents not produced during the course of discovery will not be available for use at any potential trial concerning Plaintiffs' complaint.

Defendants similarly request documents relating to Plaintiffs' claim of $200,000 in lost earnings. Defendants specifically sought Plaintiffs' income tax returns for the past five years. The court DIRECTS Plaintiffs to produce their income tax records as requested and any other records that document Plaintiffs' loss of income damages claim.

Defendants seek a "copy of all receipts for any and all purchases made on the day of the alleged incident." Plaintiffs allege in their complaint that Mr. Pavlov purchased items at the Ingles grocery store and paid for them with a credit card. The court DIRECTS Plaintiffs to produce these documents in response to Defendants' discovery request. The court, however, denies Defendants' motion to compel to the extent it seeks a copy of Plaintiffs' credit card and bank statements for the entire month around the day of the incident in question.

Defendants proffered interrogatories relating to Plaintiffs' allegation that Chief Dean and Gwinnett County are liable for inadequate training, failure to train, negligent hiring, retention, and supervision. Unlike the requests above, these are "contention" interrogatories and do not relate to documents or information generally in the primary possession of Plaintiffs. With that distinction in mind, the court GRANTS Defendants' motion to compel concerning these interrogatories to the extent they do not ask Plaintiffs to identify a specific document. That is, Plaintiffs are DIRECTED to explain to Defendants in what manner they contend that Defendants Dean and Gwinnett County have inadequately trained or failed to train their officers, but Plaintiffs do not need to identify a specific document in response to Defendants' interrogatories. Similarly, Plaintiffs are DIRECTED to explain why they contend that Defendants Dean and Gwinnett County have been negligent in their hiring, retention, or supervision of their officers. The court again cautions Plaintiffs that any information not disclosed during

the discovery process will not be available for Plaintiffs to use at trial. For example, Defendants have requested that Plaintiffs identify the customs and practices Plaintiffs contend are the basis for their claims against Chief Dean an Gwinnett County. If Plaintiffs refuse to provide this information to Defendants during discovery, it is unlikely that these claims can survive. Similarly, Defendants have asked Plaintiffs to identify any witnesses who will testify as to these claims. The court will not permit a witness to testify on behalf of any party if that witness was not identified in the discovery period with sufficient time for the opposing party to depose that witness, if desired.

Finally, Defendants request that Plaintiffs produce all photographs and videotapes reflecting the incident or documenting Mr. Pavlov's alleged injuries. Defendants not that Mr. Pavlov testified that he took a videotape of his injuries the day after the incident. Plaintiffs have not produced this videotape. The court DIRECTS Plaintiffs to produce all photographs and videotapes relating to the incident or Plaintiffs' allegations of injury as a result of the incident.

In sum, the court GRANTS IN PART AND DENIES IN PART Defendants' motion to compel [22-1]. Due to the transition between Plaintiffs' previous counsel and their appearance *pro se*, the court declines to award attorney's fees to Defendants for bringing the motion to compel. The court, however, cautions Plaintiffs that it will award attorney's fees to Defendants if the court grants any subsequent motions to compel filed by Defendants. Plaintiffs are DIRECTED to produce the information identified above within ten (10) days from the date of this order.

The court has alrealready granted numerous extensions of discovery in this case. T. The court ORDERS that the discovery period ends forty-five (e (45) days after the date of this order. This is the final extensiosion of discovery. Motions for summary judgement are due withithin twenty (20) days after the close of discovery.

IV. Miscellaneous Matteitters

Plaintiffs are proceeceeding pro se in this litigation and have filed numerous "requestests" with the court .[1] The court reminds Plaintiffs that even th though they are proceeding pro se, they must still follow th the Local Rules of this court. Those rules are availabable at the court's website, http://www.gand.uscourourts.gov/localrules.htm, or by coming to the Clerk's Office on thethe 22nd floor of the Richard B. Russell Federal Building at 75 Sp Spring Street, Atlanta, Georgia 30303.

[1]Plaintiffs ask the cœ court to open a federal investigation of Officer Morris for lying under oath dth during his deposition. Plaintiffs also inform the court that they are having ceg certain disagreements with their prior counsel, Paula McGill. Finally, Plaintaintiffs inform the court that Gwinnett County has not responded to their Open Rn Records Act request. The court determines that these matters are not directly :tly related to the civil lawsuit pending before the court. At this time, the court wrt will not pursue these matters further.

ATTACHMENT "A"

Plaintiffs filed numerous motions to extend time for certain individuals to respond to discovery requests apparently issued to those individuals by Plaintiffs. The court cannot determine why Plaintiffs are filing motion to extend time for those individuals to respond. If Plaintiffs are dissatisfied with discovery responses, Plaintiffs may file a motion to compel that is in compliance with the Federal Rules of Civil Procedure and this courts Local Rules. As such, the court DENIES AS MOOT Plaintiffs' motion to extend time for Benjamin Guile to produce documents requested [34-1]; DENIES AS MOOT Plaintiffs' motion to extend time for Police Chief Dean to produce documents [35-1]; DENIES AS MOOT Plaintiffs' motion to extend time for Attorney McGill to produce documents [36-1]; DENIES AS MOOT Plaintiffs' motion to extend time for Defendant Ingles to produce documents [37-1] and DENIES AS MOOT Plaintiffs' motion to extend time for Bank of America to produce documents [49-1].

Plaintiffs have also requested subpoenas to prepare for trial. However, Plaintiffs did not indicate to whom or for what purpose they need subpoenas. Accordingly, the court DENIES Plaintiffs' motion for subpoena [39-1] and DENIES Plaintiffs' motion for subpoenas [40-1].

V. Conclusion

The court GRANTS Plaintiffs' motion to extend discovery [21-1]; GRANTS IN PART AND DENIES IN PART Defendants' motion to compel [22-1]; GRANTS Attorney

McGill's motion to withdraw as counsel [25-1]; GRANTS Plaintiffs' motion to extend time to respond to Defendants' motion to compel [27-1]; DENIES AS MOOT Plaintiffs' motion to extend time for Benjamin Guile to produce documents requested [34-1]; DENIES AS MOOT Plaintiffs' motion to extend time for Police Chief Dean to produce documents [35-1]; DENIES AS MOOT Plaintiffs' motion to extend time for Attorney McGill to produce documents [36-1]; DENIES AS MOOT Plaintiffs' motion to extend time for Defendant Ingles to produce documents [37-1]; DENIES Plaintiffs' motion for subpoenas [39-1] DENIES Plaintiffs' motion for subpoenas [40-1]; and DENIES AS MOOT Plaintiffs' motion to extend time for Bank of America to produce documents [49-1].

IT IS SO ORDERED this 30th day of June 2004.

S/ J. OWEN FORRESTER
J. OWEN FORRESTER
SENIOR UNITED STATES DISTRICT JUDGE

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No. 07-396

IN THE

Supreme Court of the United States

VELIMIR PAVLOV, *et al.*,

Petitioner,

v.

INGLES MARKETS, INC., *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Petitioners have presented compelling reasons to grant the Petition, where the Eleventh Circuit's Opinion affirming the District Court's granting of the Respondent's motion for summary judgment finding that Mr. Pavlov was judicially estopped from pursuing his lawsuit because he failed to disclose the instant litigation as an asset in his Chapter 13 bankruptcy does not conflict with a decision of this Court or a Court of Appeals, where Petitioners do not claim that the Eleventh Circuit's ruling implicates an important federal question that has not been settled by this Court, where Petitioners do not claim that the Eleventh Circuit's ruling has so far departed from the accepted and usual course of judicial proceedings, and where Petitioners do not claim that the Eleventh Circuit has sanctioned such a departure by the District Court, as to call for an exercise of this Court's supervisory power.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent Ingles Markets, Inc. does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

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INTRODUCTION

Petitioners have presented no "compelling reasons" for their Petition for a Writ of *Certiorari* to be granted ("Petition"). *See* Sup. Ct. R. 10. Specifically, Petitioners fail to demonstrate that the Eleventh Circuit's June 6, 2007 Opinion ("Opinion") is in conflict with a decision of this Court or another Court of Appeals. *See* Sup. Ct. R. 10(a). In fact, the Petitioners have not cited this Court to any case law of any Circuits. Petitioners fail to argue or demonstrate that the Eleventh Circuit decided an important federal question that has not been settled by this Court. Id. Petitioners fail to demonstrate that the Eleventh Circuit's ruling has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Id. The Petitioners fail to demonstrate that the Eleventh Circuit has sanctioned such a departure by the District Court as to call for an exercise of this Court's supervisory power. *See* Sup. Ct. R. 10(a)-(c). Rather, at best, the Petitioners argue that the Eleventh Circuit and the District Court based their decisions upon erroneous factual findings or the misapplication of a properly stated rule of law. Therefore, the Petition should be denied.

The "Questions Presented for Review" by the Petitioners state that judicial estoppel was improperly applied to the Petitioners' lawsuit because of mistakes made by their bankruptcy attorney and their attorneys in this case. Based upon their attorneys' mistakes, the Petitioners allege that their attorneys have engaged in a conspiracy with the Respondent's attorneys to have their case dismissed. The Petitioners argued that this alleged conspiracy allows conspiracies to occur in the

American judicial system. The Petitioners are asking this Court to grant their Petition based on these alleged conspiracies. The Petitioners have failed completely to carry their burden of demonstrating that there are any compelling reasons for this Court to grant the Petition. Accordingly, the Petition should be denied.

MISSTATEMENTS AND ERRORS BY THE PETITIONERS

The Petitioners have failed to present with accuracy, brevity and clarity what is essential for this Court to readily and adequately understand the points requiring consideration as required by Sup. Ct. R. 14.4. Therefore, the Petition should be denied.

The Petitioners have failed to comply with Sup. Ct. R. 14.1. Therefore, the Petition should be denied.

The Petitioners are not permitted to Petition this Court for review of the District Court's March 22, 2005 Order, improperly identified by the Petitioners as the June 30, 2004 Order. The Eleventh Circuit determined that because the Petitioners did not argue any issues relating this Order on appeal, the Petitioners had abandoned any such claims.

The Petitioners have misstated the Eleventh Circuits holding in *Parker v. Wendy's Int'l, Inc.*, 365 F.3d 1268 (11th Cir. 2004) and its application to the present case. Both the District Court and the Eleventh Circuit analyzed and distinguished *Parker* from the facts of the present case. As such, Petitioners reliance upon this case is misplaced.

Petitioners have misstated the facts of the case in their Petition. Because the Petitioners have misstated the facts of the case and such misstatements bear on what issues would properly be before the Court, it is necessary for the Respondent to provide the Court with the facts of the case. Misstating facts has been a constant problem for Pavlov throughout this litigation. In its March 22, 2005 Order, the District Court stated as follows:

> As Defendants strenuously argued in their motions for summary judgment, the court does have some concern about the variations of Mr. Pavlov's testimony. Significant aspects of Mr. Pavlov's testimony have changed from his testimony at his criminal trial, to his civil deposition, and finally in his response to Defendants' motions for summary judgment. Under these circumstances, the court finds it must caution Plaintiffs about the issue of perjury.

STATEMENT OF THE CASE

I. Procedural History.

Petitioners filed suit against Ingles Market, Inc., Greg Tolbert, Officer C.E. Morris, in his individual and official capacities, Police Chief W.H. Dean, in his individual and official capacities, and Gwinnett County, Georgia alleging in twelve counts constitutional violations, claims pursuant to 42 U.S.C. §§ 1983 and 1985, state constitution claims, false imprisonment, false arrest, assault and battery, malicious prosecution,

intentional infliction of emotional distress, negligent infliction of emotional distress, negligent training and supervision, respondeat superior/vicarious liability, loss of consortium, and punitive damages. Plaintiffs sought $10,000,000 in general damages for the first ten counts of the complaint plus damages for loss of consortium and punitive damages. Petitioners alleged that on May 28, 2001, Velimir Pavlov ("Pavlov") entered the Ingles grocery store in Dacula, Georgia. On the way out of the store, Pavlov contends that he was assaulted by one of the store's assistant managers. Then, according to Pavlov, Greg Tolbert, the store's manager, instructed employees to block Pavlov's car in the parking lot and to detain Pavlov. Pavlov further contends that one of the store's employees pulled a gun out and demanded money from him. Pavlov alleges that when Officer Morris, a Gwinnett County police officer, arrived, he, too, began to accost Pavlov. Pavlov was charged with obstruction of a law enforcement officer, simple battery, and DUI. On March 27, 2002, a jury acquitted Pavlov of all charges. Based upon these allegations, Petitioners filed the civil action described herein.

Following discovery, all Defendants moved for summary judgment. The District Court granted summary judgment to Tolbert, Officer Morris, Police Chief Dean, and Gwinnett County. The District Court granted Ingles motion for summary judgment on the Petitioners' claims for false arrest, malicious prosecution, negligent infliction of emotional distress, and intentional infliction of emotional distress. The district court found that, pursuant to Pavlov's version of events, Petitioners' claims for false imprisonment, assault and battery, negligent retention, and loss of consortium could proceed.

On April 7, 2005, Pavlov filed for Chapter 13 bankruptcy. On May 17, 2005, the Bankruptcy Trustee filed an objection to the plan and requested the appointment of special counsel. On June 8, 2005, Pavlov amended his plan and reduced the dividend to unsecured creditors. Pavlov's plan was confirmed on August 19, 2005. Respondent filed a motion for summary judgment based upon judicial estoppel. On April 11, 2006, the District Court granted Respondent's motion.

Petitioners appealed the previously granted summary judgment and the summary judgment based on judicial estoppel. On June 6, 2007, the Eleventh Circuit, in a per curiam opinion, affirmed the District Court's application of judicial estoppel. Further, the Eleventh Circuit determined that because the Petitioners did not argue any issues relating to the District Court's prior order granting summary judgment, the Petitioners had abandoned any such claims.

II. Facts Regarding Underlying Incident.

On May 28, 2001, Jeffrey Meeks, a non-party to this litigation, called 911 to report that a van was swerving from one side of the road to the other and that 6 or 7 brown bottles, believed to be beer bottles, had been thrown out of the van. Meeks followed the van for approximately 4 to 5 miles. Meeks followed Pavlov to Ingles and saw Pavlov go into the store. Officer Morris was notified by radio of these complaints.

Morris was notified that this van was in the Ingles parking lot. Upon arriving at Ingles, at least three (3)

vehicles were blocking the van in the parking lot and the drivers of these vehicles were outside of their vehicles. Morris told the individuals to move their vehicles, and he parked a short distance away to observe the van in question. Morris indicated he could not do anything about the situation until he saw Pavlov in the van driving.

At his criminal trial, Pavlov testified he went to Ingles to buy vegetables. Because the vegetables were not in good condition, he decided his wife could buy the vegetables at a later time and he left the store. When Pavlov exited the store, his car was blocked by another car and three individuals were in front of the car and one individual was behind the car. He asked the individuals to move the car. They responded that Pavlov owed them $100 for hitting their car. Pavlov claims the individual behind the car pulled a gun from his pocket. The person who pulled the gun was wearing a yellow and blue striped shirt. Pavlov stated he would go inside and get the money.

Pavlov went back into the Ingles and grabbed an employee and asked for the manager. Pavlov could not find the manager so he went to the pay phone to call the police. Through the window of the store, he could see the individuals who were blocking his car move their car. Pavlov then left the store and as he was leaving, he heard someone yelling for him to stop. Pavlov stopped and determined that Morris was yelling at him. Morris asked Pavlov for identification. As Pavlov was trying to take his wallet from his pocket, he claims that Morris began to strike him with an ASP baton. Pavlov began to walk away from the officer and the officer yelled for him to

lie down. Pavlov claims he was afraid to get on the ground. Meeks and the officer took Pavlov to the ground.

In the civil case, however, Pavlov tells a different story. Pavlov went into Ingles to buy some vegetables and a bottle of wine. As he was paying for groceries, he heard a voice saying not to give him a receipt because he was drunk and could not buy the wine. Pavlov claims the bag boy took the wine and Pavlov grabbed the boy by the wrist. Pavlov then claims that he was grabbed by the neck from behind by an individual who said not to let Pavlov buy the wine. Pavlov claims that the man who grabbed him by the neck was working for Ingles, was the assistant manager of Ingles and was wearing a green and blue striped shirt. Pavlov was able to turn out of the headlock and was then approached by the manager, Greg Tolbert. Pavlov took his bag of groceries and walked towards the door. Pavlov pushed his cart out to his van to unload the groceries but decided not to take the groceries. He had gotten halfway back to the store when he noticed the man who had grabbed him by the back of the neck. Pavlov says that Tolbert told two female employees, who were pushing carts into the store, not to let him into the store. When he started toward the store, he claims the two girls grabbed him by the neck. He told the girls to let him go and they complied.

Pavlov then noticed a car pulling behind his car and when he approached, a girl was sitting on the hood of the car blocking his car. He claims this girl was an Ingles' employee because she checked him out on a previous occasion, but he cannot say that she was working or on duty on the night in question. A tall boy was with this girl but Mr. Pavlov did not recognize this boy as an

Ingles' employee. Pavlov asked the people to move their car and the tall man said Pavlov owed him $100. Pavlov noticed that a fourth individual was with them and this fourth person allegedly pulled a gun on Pavlov. Pavlov did not know if the man who pulled the gun worked for Ingles. Pavlov returned to the Ingles to withdraw $100. When Pavlov got inside the Ingles store, he did not call 911 from the payphone. Instead, he attempted to get the Ingles' manager to call the police but could not get the manager to call the police. When the police arrived a short time later, Pavlov did not tell Morris that someone had pulled a gun on him. During the litigation, Pavlov identified Shane Haley, an Ingles' manager, as the man in the striped shirt. However, Haley was out on disability leave with two broken ankles from March 2001 through June 2001.

Much more consistent with Pavlov's testimony at the criminal trial, Greg Tolbert, Ingles' front end manager, testified that he noticed Pavlov walking back and forth between the two entrances and looking out the doors. As Pavlov was at the one of the entrances, Nathan Sanders, an Ingles employee, came through the door. Pavlov grabbed Sanders by the arm and turned him around. Tolbert approached Pavlov and told him to let go of the employee and asked Pavlov to leave the store. Pavlov accused Sanders of calling the police on him. Tolbert did not call the police and has no knowledge of anyone from Ingles calling the police on Pavlov. Rather, Tolbert stepped outside the Ingles and motioned for a Gwinnett County police officer, who he had watched pull up earlier, to come inside the store.

Tolbert went outside and asked Morris to handle the situation. When Morris went inside the store, Pavlov was at the payphone and kept dropping quarters on the floor. Morris asked Tolbert if Sanders wanted to press charges and Tolbert responded that he did not think so. Tolbert told Morris he just wanted Pavlov to leave the store. Morris asked Pavlov to get off the phone. Pavlov stated he was leaving the store. Pavlov also stated he knew his rights and they could not hold or detain him and he walked out of the store. Morris responded by asking Pavlov if he wanted his license back but Pavlov ignored the officer. Morris decided to arrest Pavlov for disorderly conduct because Morris believed he had ample probable cause. Morris grabbed Pavlov by his arm and told him to stop just as they got outside the store. Morris informed Pavlov he was under arrest. Morris intended to charge Pavlov with disorderly conduct because Pavlov was intoxicated, boisterous, rude, uncooperative, loud, and causing a scene. Pavlov walked away from Morris in a hurried manner and Morris followed Pavlov into the parking lot telling him to stop and get on the ground. Morris grabbed Pavlov's left arm but Pavlov jerked away from Morris. Morris knew he needed back-up.

Morris tried to effectuate the arrest from the time Pavlov exited the Ingles, and this incident escalated into the parking lot with Pavlov resisting the entire time. Pavlov started for his vehicle and Morris struck him with his ASP baton. The first blow with the baton was to Pavlov's right leg but the blow did not appear to faze Pavlov. Pavlov did not react to the hit from the baton and Morris hit Pavlov a second time. Morris hit Pavlov with the baton several times and was still not able to subdue Pavlov, who continued to resist arrest. At this

point, Meeks asked Morris if he needed help and Morris responded that he did. Morris needed help because he was afraid that either he or Pavlov was going to get hurt without assistance. Meeks grabbed Pavlov in a bear hug and took him to the ground. With Meeks's assistance, Morris was able to place Pavlov under arrest. No one from Ingles was involved in or assisted in Pavlov's arrest. Pavlov identified the man who grabbed him by the neck in the store and the man who assisted the officer in arresting him as the same person. However, Pavlov disputes that this person was Meeks. Pavlov admits Tolbert did not take him to the ground.

Following the arrest, Pavlov was transported to Gwinnett Medical Center for examination. At Gwinnett Medical Center, Pavlov was belligerent, abusive and refused treatment. Pavlov was then taken to the Gwinnett County Jail. Officer Morris took out an arrest warrant for obstruction of an officer.

No one at Ingles suggested to Morris that Pavlov should be arrested. In fact, Tolbert told Morris that he did not think that Sanders wanted to press charges. No one at Ingles suggested that Morris take out a warrant for any crime. No Ingles' employee blocked Pavlov's van. Meeks does not own a gun and did not see the other couple that blocked Pavlov's van with a gun.

Ingles' employees are required to wear white shirts and khaki pants. The Ingles' managers wear white or light colored dress shirts, khaki or dark pants, dress shoes and a tie. Employees are not allowed to work if they are not wearing the appropriate clothing. Ingles' employees are not allowed to wear striped shirts to work.

Pavlov was ultimately charged with felony obstruction of a police officer, simple battery, and driving under the influence of alcohol. In bringing the charges of simple battery and driving under the influence of alcohol, Morris consulted with Gwinnett County District Attorney Danny Porter. These charges were presented to the grand jury and the grand jury returned an indictment against Pavlov. In a subsequent criminal trial on these charges, Pavlov was found not guilty.

III. Facts Regarding the Application Judicial Estoppel.

On April 7, 2005, Pavlov filed a Voluntary Petition for Chapter 13 bankruptcy in the United States Bankruptcy Court, Northern District of Georgia, Gainesville Division. In that petition, Pavlov declared under penalty of perjury that the information provided was true and correct. In Paragraph 4 of the Statement of Financial Affairs filed with the petition entitled "Suits and administrative proceedings . . .", Pavlov lists this lawsuit and describes the nature of this proceeding as "Plaintiffs request for Depositions of Ingles Employees". Pavlov signs the Statement of Financial Affairs under penalty of perjury. In Schedule B. entitled "Personal Property", Pavlov indicates in response to Type of Property No. 20, "Other contingent and unliquidated claims of every nature . . ." that there are no such claims. Pavlov declared under penalty of perjury that he read the schedules and the schedules were true and correct.

Pavlov's original "Debtor's Chapter 13 Plan" allowed for unsecured creditors to be paid 16 cents on the dollar. On May 17, 2005, the bankruptcy trustee objected to

Pavlov's plan. In the objection, the trustee noted that an application for special counsel was needed. On June 8, 2005, Pavlov, by and through his bankruptcy attorney, amended the Debtor's Plan and Schedules to reduce the unsecured creditors' dividend to 6 cents on the dollar. Pavlov also amended his petition to show this case as a debt of $3,642.25 pursuant to judgment. Pavlov declared under penalty of perjury the amendment was true and correct. On August 12, 2005, Pavlov again confirmed under penalty of perjury there were no further modifications to his case and Plan. On August 19, 2005, the plan, as amended, was confirmed.

REASONS FOR DENYING THE PETITION

The decisions below do not conflict with a decision of this Court or any Court of Appeals nor do they implicate a federal question that has not been decided by this Court. Likewise, the decisions below do not so far depart from the accepted and usual course of judicial proceedings nor has Eleventh Circuit sanctioned such a departure by the District Court, as to call for an exercise of this Court's supervisory power. Accordingly, Petitioners have not carried their burden of demonstrating any "compelling reason" for the Petition to be granted. *See* Sup. Ct. R. 10.

I. The District Court's Application of Judicial Estoppel Is Reviewed for Abuse of Discretion.

Judicial estoppel is an equitable doctrine invoked at a court's discretion. *New Hampshire v. Maine*, 532 U.S. 742, 750, 121 S.Ct. 1808, 1815, 149 L.E.2d 968 (2001)(internal citations omitted). Under this doctrine,

a party is precluded from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding. Judicial estoppel is an equitable concept intended to prevent the perversion of the judicial process. *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1285 (11th Cir. 2002). The Court of Appeals reviews a district court's application of judicial estoppel for abuse of discretion. *Id.* at 1284 (internal citation omitted). While the application of judicial estoppel is reviewed for abuse of discretion, Petitioners must also carry their significantly more strenuous burden of demonstrating that there are compelling reasons to grant the Petition. Here, the Petitioners have not carried their burden. Rather, to the extent that the Petitioners have asserted error, the asserted error involves the Petitioners claim of erroneous factual findings or the misapplication of properly stated principles of judicial estoppel. Petitioners have not carried their burden because this is simply an unremarkable case in which the District Court exercised its considerable discretion in applying judicial estoppel.

II. The Eleventh Circuit's Criteria for the Application of Judicial Estoppel is Consistent with this Court's Instructions.

The purpose of the doctrine is to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment. *New Hampshire*, 532 U.S. at 749-750. In the Eleventh Circuit, judicial estoppel is applied to the calculated assertion of divergent sworn positions. The doctrine is designed to prevent parties from making a mockery of justice by inconsistent

pleadings. *American National Bank of Jacksonville v. Federal Deposit Insurance Corp.*, 710 F.2d 1528, 1546 (11th Cir. 1983); *Burnes*, 291 F.3d at 1285.

The doctrine of judicial estoppel protects the integrity of the judicial system, not the litigants; therefore, numerous courts have concluded, and the Eleventh Circuit agrees, that while privity and/or detrimental reliance are often present in judicial estoppel cases, they are not required. *Burnes*, 291 F.3d at 1286 (quoting *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 360 (3rd Cir. 1996); *Patriot Cinemas, Inc. v. General Cinema Corp.*, 834 F.2d 208, 214 (1st Cir. 1987); *Edwards v. Aetna Life Ins. Co.*, 690 F.2d 595, 598 (6th Cir. 1982)). Courts have also concluded that since the doctrine is intended to protect the judicial system, those asserting judicial estoppel need not demonstrate individual prejudice. *Burnes*, 291 F.3d at 1286.

The Eleventh Circuit considers two factors in the application of judicial estoppel. *Salomon Smith Barney, Inc. v. Harvey, M.D.*, 260 F.3d 1302, 1308 (11th Cir. 2001). First, it must be shown that the allegedly inconsistent positions were made under oath in a prior proceeding. Second, such inconsistencies must be shown to have been calculated to make a mockery of the judicial system. *Id.*; *Burnes*, 291 F.3d at 1285. The Eleventh Circuit's two factors are consistent with this Court's instructions regarding judicial estoppel and its factors provide courts with sufficient flexibility in determining the applicability of the doctrine of judicial estoppel based on the facts of a particular case. *Burnes*, 291 F.3d at 1285-1286. Therefore, the Petitioners have not argued, nor could

they argue, that the decisions below have so far departed from the accepted and usual course of judicial proceedings or that the Eleventh Circuit has sanctioned such a departure by the District Court, as to call for an exercise of this Court's supervisory power.

III. The District Court Did Not Abuse Its Discretion by Correctly Applying Judicial Estoppel.

The District Court correctly determined that judicial estoppel could be applied against the Petitioners' claims despite any interest of the bankruptcy Trustee in the causes of actions as the property of Pavlov's bankruptcy estate.

A. Pavlov's inconsistent statements were made under oath.

Each of Pavlov's bankruptcy forms were submitted under oath and under penalty of perjury to the Bankruptcy Court. Therefore, the district court properly determined that first factor for the application of judicial estoppel had been met.

B. Pavlov's representations to the bankruptcy court were calculated to make a mockery of the judicial system.

A debtor seeking shelter under the bankruptcy laws must disclose all assets, or potential assets, to the bankruptcy court. 11 U.S.C. § 521(1) and 541(a)(7). Full and honest disclosure in a bankruptcy case is crucial to the effective functioning of the federal bankruptcy system. *Burnes*, 291 F.3d at 1286 (quoting

Ryan Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 362 (3rd Cir. 1996). Creditors and the bankruptcy court rely on the accuracy of the disclosure statements. *Burnes*, 291 F.3d at 1286. The importance of full and honest disclosure cannot be overstated. *Burnes*, 291 F.3d at 1286 (quoting *Ryan Operations*, supra). Deliberate or intentional manipulation can be inferred from the record. *Burnes*, 291 F.3d at 1287. A debtor's failure to satisfy its statutory disclosure duty is inadvertent only when, in general, the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment. *Burnes*, 291 F.3d at 1286 (quoting *In re Coastal Plains, Inc.*, 179 F.3d 197, 205 (5th Cir. 1999)).

i. Pavlov had knowledge of this lawsuit.

In the present case, the record is clear that Pavlov had knowledge of his claim against Ingles. The incident at issue occurred on May 28, 2001 and Pavlov filed this litigation on May 14, 2003. Pavlov was represented by an attorney in the bankruptcy proceeding. The record leaves no doubt that prior to filing his bankruptcy petition on April 7, 2005 that Pavlov was aware of the present lawsuit, the nature of the present lawsuit, and that he was seeking money damages as part of this lawsuit. Despite this knowledge, Pavlov failed to disclose the nature of this lawsuit and the money damages he was seeking. However, in his Statement of Financial Affairs, Pavlov describes the nature of this litigation as "Plaintiffs request for Depositions of Ingles Employees". In Schedule B. entitled "Personal Property" in response to No. 20, Pavlov indicates that there are no "other contingent and unliquidated claims of every nature . . ."

Rather, when instructed by the trustee to file an application for special counsel, Pavlov amends his financial disclosures to show this lawsuit as a debt as opposed to a claim where he was seeking over $100 million.

ii. Pavlov had a financial motive to conceal this litigation.

Pavlov had a financial motive to conceal the present lawsuit and the nature of the present lawsuit. The Eleventh Circuit has noted that a financial motive to secret assets exists under Chapter 13 as well as under Chapter 7 because the hiding of assets affects the amount to be discounted and repaid. *De Leon v. Comcar Industries, Inc.*, 321 F.3d 1289, 1291 (2003). Pavlov gained an advantage when he changed this lawsuit to a debt of the estate. See *Barger v. City of Cartersville*, 348 F.3d 1289, 1296 (11th Cir. 2003). By omitting the claims, Pavlov could keep any proceeds for himself and not have the proceeds become part of the bankruptcy estate. *Id.*

In the present case, Pavlov lists the present lawsuit in his original petition and describes the nature of this proceeding as "Plaintiffs request for Depositions of Ingles Employees". In his schedule of property, Pavlov indicates that there are no contingent nor unliquidated claims. Pavlov's original "Debtor's Chapter 13 Plan" allowed for unsecured creditors to be paid 16 cents on the dollar. On June 8, 2005, Pavlov amended the Debtor's Plan and Schedules to reduce the dividend to unsecured creditors to 6 cents on the dollar. Pavlov also amended his Petition to show this litigation as a debt of $3,642.25

pursuant to judgment. On August 12, 2005, Pavlov again confirmed there were no further modifications to his case and Plan.

Pavlov's financial benefit is not hypothetical but has actually occurred. After amending his plan and schedules to indicated that a judgment had been rendered against him in this lawsuit, Pavlov received a financial benefit because the amount paid to unsecured creditors was reduced from 16 cents on the dollar to 6 cents on the dollar. There is no evidence of record that Pavlov ever disclosed to the trustee or creditors the potential monetary value of this lawsuit. Rather, Pavlov amended his plan to indicate that a judgment had been rendered against him. This conduct indicates that Pavlov attempted to deceive the trustee and the bankruptcy court. Based upon these facts, the district court properly exercised its discretion by determining that Pavlov had something to gain from misrepresenting this litigation to the bankruptcy court. Therefore, the district court did not err by determining that the Plaintiffs' claims were barred by judicial estoppel.

CONCLUSION

Petitioners have not established any compelling reason for this Court to grant the Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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